

D3DLLEV1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA

4 v.

11 Cr. 62 (PAC)

5 DONNA LEVY,
6 DAVID LEVY,

Jury Trial

Defendants.

7 -----x

8 New York, N.Y.
9 March 13, 2013
10 10:37 a.m.

Before:

11 HON. PAUL A. CROTTY

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the
16 Southern District of New York

17 CARRIE H. COHEN

HOWARD S. MASTER

18 Assistant United States Attorneys

19 HOWARD M. SREBNICK

20 NOAH FOX

ALEX ARTEAGA-GOMEZ

21 Attorneys for Defendant Donna Levy

22 GERALD L. SHARGEL

23 ROSS M. KRAMER

JENNIFER HAYS

24 Attorneys for Defendant David Levy

D3DLLEV1

1 (Trial resumed)

2 (Jury not present)

3 THE COURT: I guess there was problems on the subway
4 this morning. Some of the jurors were late.

5 Marlon, will you call in the jury.

6 (Jury present)

7 THE COURT: Good morning.

8 Mr. Holmes, you're still under oath.

9 THE WITNESS: Yes, sir.

10 THE COURT: Mr. Shargel.

11 MR. SHARGEL: Thank you, your Honor.

12 DERRICK M. HOLMES, resumed.

13 CROSS-EXAMINATION (cont'd)

14 BY MR. SHARGEL:

15 Q. Mr. Holmes, good morning.

16 A. Good morning.

17 Q. I would like to start by asking you something that occurred
18 after the company, after Banneker went public and started
19 selling shares. I want to focus your attention on that time
20 frame.

21 You understood after conversations with Bill Aul, you
22 know who Bill Aul is, right?

23 THE WITNESS: Your Honor, if it pleases the Court, can
24 I address you?

25 THE COURT: Yeah.

D3DLLEV1

Holmes - cross

1 THE WITNESS: After speaking with my counsel --

2 MR. SHARGEL: Your Honor, can we have this outside the
3 presence of the jury. I don't know what's going to be said.

4 THE COURT: Why don't you go ahead and pose a
5 question.

6 Do you know Mr. Aul?

7 That's the question, isn't it?

8 Q. You know Mr. Aul, right?

9 THE COURT: Do you know Mr. Aul?

10 MR. SHARGEL: I'm not going to ask you about any
11 conversations you had with a lawyer.

12 THE WITNESS: Can I address the Court?

13 THE COURT: We'll ask the jury to step out.

14 (Continued on next page)

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D3DLLEV1

1 (Jury not present)

2 THE COURT: Please be seated.

3 What is it you want to say?

4 THE WITNESS: After speaking with my counsel and the
5 fact that I'm not represented, the fact that I don't have a dog
6 in this fight, the fact that I was subpoenaed and I came, I
7 never filed any charges against the Levys, it's my counsel
8 advised me that it's prudent at this juncture for me to take
9 the Fifth Amendment. Not to mention, Mark Twain said anyone
10 who represents themselves has a fool for a lawyer.

11 THE COURT: Has a fool for a client.

12 THE WITNESS: Fool for a client.

13 So at this point there's no probative value for my
14 company or myself to even answer any more questions.

15 THE COURT: Are you going to refuse to answer any
16 questions on the grounds of the Fifth Amendment?

17 THE WITNESS: Absolutely.

18 THE COURT: Mr. Master.

19 Ms. Cohen?

20 MS. COHEN: Your Honor, I would suggest --

21 MR. SHARGEL: Judge, may we have outside the presence
22 of the witness?

23 THE COURT: We'll do it at the side bar.

24 (At the side bar)

25 THE COURT: Yeah.

D3DLLEV1

1 MS. COHEN: Your Honor, the government would suggest
2 the government reach out to speak to his counsel.

3 MR. MASTER: Whoever that is.

4 MS. COHEN: Whoever that is and try to --

5 MR. SHARGEL: I think he was saying he doesn't have
6 counsel.

7 THE COURT: He doesn't have counsel here.

8 MS. COHEN: Here.

9 THE COURT: I understood he spoke with his counsel
10 last night.

11 MS. COHEN: That the government reach out to his
12 counsel and talk to his counsel to determine whether there is a
13 legitimate basis to assert the Fifth Amendment and what is
14 going on.

15 MR. SHARGEL: I don't quarrel with that.

16 MR. MASTER: This is news to us.

17 THE COURT: I gather.

18 MR. SHARGEL: News to all of us.

19 THE COURT: News to all of us.

20 Do we have another witness?

21 MR. MASTER: We do.

22 THE COURT: Who?

23 MS. COHEN: Ben Lafrancois. He is the chief executive
24 officer of Greenway Design.

25 THE COURT: OK. What should we tell Mr. Holmes?

D3DLLEV1

1 We're going to excuse him now. He's to remain here.

2 MS. COHEN: I wouldn't excuse him because he's still
3 under subpoena and still on the witness stand.

4 THE COURT: We're going to take him off the stand.

5 MS. COHEN: Or perhaps we can take maybe in 15 minutes
6 if we talk to counsel, we can work it out and then Mr. Shargel
7 can finish his cross or at least understand what's going on.

8 THE COURT: Do you want to take another witness? I
9 don't know how long this is going to take. I don't want to
10 keep the jury waiting.

11 MR. SHARGEL: The only problem I have is that
12 speculation can run wild about what's going on in the jury
13 room. So I think we have to deal with the problem now, most
14 respectfully.

15 MS. COHEN: I agree.

16 MR. SHARGEL: Does that make sense to everyone?

17 MR. MASTER: Absolutely.

18 THE COURT: I'll call the jury in, adjourn until
19 noontime.

20 MS. COHEN: That makes sense, your Honor.

21 THE COURT: All right.

22 (In open court; jury not present)

23 THE COURT: I'm going to ask Mr. Holmes who his
24 counsel is.

25 MR. SHARGEL: The same instruction applies since this

D3DLLEV1

1 is on cross-examination, and he is on cross-examination, that
2 the government is not going to speak to him. He is represented
3 by counsel.

4 THE COURT: Correct. All right.

5 MS. COHEN: We'll only talk to him to get the phone
6 number.

7 THE COURT: Mr. Holmes, could you tell us who your
8 lawyer is?

9 THE WITNESS: Thomas Frerichs.

10 THE COURT: Where does he -- do you have his phone
11 number?

12 THE WITNESS: Yes.

13 THE COURT: What is his number?

14 THE WITNESS: (319)290-4444.

15 THE COURT: And where is that?

16 THE WITNESS: He's in Waterloo, Iowa.

17 THE COURT: All right. So the government will call
18 your attorney.

19 I'm going to instruct you now, Mr. Holmes, you're not
20 to speak with the government.

21 THE WITNESS: OK.

22 THE COURT: We're going to see if we can work out this
23 problem with your attorney. I'm going to -- anything else?

24 MS. COHEN: No, your Honor. After we speak with,
25 hopefully we speak with Mr. Holmes' attorney, we will provide

D3DLLEV1

1 Mr. Holmes with a phone in the witness room to talk to his
2 attorney.

3 THE COURT: Would you stay in the witness room until
4 we resolve this problem?

5 THE WITNESS: If I can go somewhere else, your Honor,
6 it's freezing in there.

7 THE COURT: It's freezing. Do you want to go down to
8 the cafeteria?

9 THE WITNESS: I'd go anywhere else other than there if
10 you'd be so kind.

11 THE COURT: Go down to the cafeteria. Don't leave the
12 building. We'll try to resolve this.

13 THE WITNESS: Yes, sir. No, I won't.

14 (Witness not present)

15 THE COURT: Call the jury in.

16 What do you want me to tell the jury? We hit a bump
17 in the road?

18 MR. SHARGEL: I like bump in the road.

19 MS. COHEN: I don't love bump in the road.

20 MR. MASTER: We're not crazy about that.

21 THE COURT: Matter to take up.

22 MS. COHEN: Matter to resolve and we will resume back
23 at noon.

24 THE COURT: Marlon. OK.

25 (Continued on next page)

D3DLLEV1

(Jury present)

THE COURT: We've come upon a matter that we have to discuss and it's going to take us a little bit of time. So I don't want you sitting in the jury room. I'm going to adjourn the morning proceedings until about -- we're going to be able to work this out in an hour or so -- until 12:15. So you can take a walk, get a cup of coffee, we'll resume at 12:15. Thank you very much.

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D3DLLEV1

(Jury not present)

THE COURT: I have no idea what the basis for the Fifth Amendment claim is. Maybe he's tired of testifying.

MS. COHEN: Correct. The government does not see a basis, but we'll speak with his counsel. Perhaps his counsel can explain that to him.

MR. MASTER: Just to be clear, we don't believe not having a dog in the fight is a valid basis. We don't think that not having a dog in the fight is a valid basis for asserting the Fifth.

THE COURT: All right. I'll take your counsel on what the next step should be if he persists in taking the Fifth Amendment.

MS. COHEN: We will look at, we'll look at that while we're --

THE COURT: Mr. Shargel, Mr. Srebnick, I invite your input as well.

MR. SHARGEL: Very well.

THE COURT: We'll reconvene at ten after 12.

(Recess)

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D3drlev2

Holmes - cross

1 (12:25 p.m.)

2 THE COURT: I understand the problems have been worked
3 out and Mr. Holmes is going to testify.

4 MS. COHEN: Correct, your Honor.

5 THE COURT: We asked the jury to get lunch. I intend
6 to go to 5 o'clock. Maybe we'll take two 15-minute breaks.

7 MS. COHEN: That's fine with the government, your
8 Honor.

9 THE COURT: Mr. Shargel?

10 MR. SHARGEL: Yes, your Honor.

11 MR. SREBNICK: Yes, your Honor.

12 MR. SHARGEL: It may be necessary for me to ask for a
13 recess in light of Mr. Levy's condition.

14 THE COURT: Sure. If it comes up, ask.

15 MR. SHARGEL: Very well.

16 (Continued on next page)

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D3drlev2

Holmes - cross

1 (Jury present)

2 THE COURT: Thank you for your patience. All right,
3 Mr. Shargel.

4 MR. SHARGEL: Thank you, your Honor.

5 BY MR. SHARGEL:

6 Q. Mr. Holmes, good afternoon.

7 A. Good afternoon.

8 Q. I was asking you before we broke about the period of time
9 when Banneker went public. You recall that, right?

10 A. The period of time when we went public?

11 Q. This period of time when shares were issued.

12 A. OK.

13 Q. Do you recall when that was, approximately?

14 A. In the fall of 2007, I believe.

15 Q. You received a certain amount of shares in the company,
16 right?

17 A. I received?

18 Q. Shares in the company.

19 A. Yes.

20 Q. You knew that David Levy received shares in the company,
21 correct?

22 A. Yes.

23 Q. Your shares were restricted shares, correct?

24 A. Correct.

25 Q. You understood that to mean that you couldn't sell those

D3drlev2

Holmes - cross

1 shares for a period of time, right?

2 A. Correct.

3 Q. That period of time, as it was described to you, was one
4 year, right?

5 A. Correct.

6 Q. You knew at the time that Mr. Levy had unrestricted, or
7 free-trading shares, correct?

8 A. I recall, I believe so, yes.

9 Q. Let me go back to the time a little earlier than this, when
10 you first met David Levy. Do you recall when that was? Could
11 you remind the jury about when that was.

12 A. Yes. That was sometime again in the late summer or early
13 fall 2007.

14 Q. That was the first meeting that you had at his house in
15 Fort Lauderdale, Florida?

16 A. Correct.

17 Q. You actually took a plane. You knew you were going to have
18 a meeting with Mr. Levy, you had spoken to Bree Foster, you
19 remember Bree Foster, right?

20 A. I do.

21 Q. She is the one who suggested you have a meeting with Mr.
22 Levy?

23 A. Yes.

24 Q. She was with you at the time of that meeting in Fort
25 Lauderdale, Florida?

D3drlev2

Holmes - cross

1 A. Yes.

2 Q. You were there, Mr. and Mrs. Levy were there, right?

3 A. Correct.

4 Q. Tim Hardaway came along?

5 A. Yes.

6 Q. Because he was a major investor in the company at the time,
7 correct?

8 A. He was the president of the company.

9 Q. He was actually the president of the company and had an
10 equity interest in the company, right?

11 A. Correct.

12 Q. I think you told us yesterday that it was something like 15
13 percent, fair statement?

14 A. I believe that's pretty accurate, yes.

15 Q. That's your best recollection, right?

16 A. Yes, it is.

17 Q. When you met with Mr. Levy, and I know Mrs. Levy, we know
18 everyone who was there, but when you met with Mr. Levy you
19 brought some facts and figures along, right?

20 A. I don't recall.

21 Q. Yesterday we were referring during cross-examination about
22 the presentation that you had, the business plan as you
23 described it.

24 A. Yes. But, to be honest, I didn't really recognize that
25 particular business plan. We had so many. We had several

D3drlev2

Holmes - cross

1 business plans. I can't say for sure that that was the one, if
2 that's your question.

3 Q. The business plans that you drew or drafted, did those
4 business plans include projections of what you might expect in
5 renew in the years head?

6 A. Most business plans do. But, again, I can't be specific,
7 because I don't remember what particular business plan was
8 presented, if any, at that meeting.

9 Q. Again help us with the timing of the meeting. When did it
10 occur, as best you can recall?

11 A. It was sometime in the summer or the fall 2007.

12 MR. SHARGEL: We have in evidence Government
13 Exhibit -- actually, our Exhibit A176. Could we have that.
14 This is in evidence, your Honor.

15 THE COURT: Do you want to put it up?

16 MR. SHARGEL: Yes. I'm going to put this on the ELMO,
17 with the permission of the Court.

18 THE COURT: Yes.

19 Q. Do you see the words at the top "Banneker Watches 5 year
20 unit and revenue forecast"? Do you see that?

21 A. Yes.

22 Q. Obviously, you and the investors in the company were
23 interested in the potential for the business? That's a fair
24 statement, isn't it?

25 A. I believe so, yes.

D3drlev2

Holmes - cross

1 Q. You had looked carefully into what the market might be in
2 connection with the watches that you were designing, and you
3 were optimistic about what might have occurred for the
4 business, right?

5 A. You know, not so much myself, but maybe some of the other
6 people in the company that basically may have handled the
7 numbers in that.

8 Q. But you, as the chief executive officer of the company,
9 knew what was in these business plans, right?

10 A. I would try to familiarize myself with it.

11 Q. Let me put the first page of this document on. I'll get
12 back to the other one. This is the first page of Defense
13 Exhibit A176. It's dated January 15, 2007, right? Do you see
14 that date?

15 A. Yes, I see it.

16 Q. The address is on the bottom, Banneker Watches, and the
17 address in Denver, Colorado, and the telephone number. We can
18 see that your email address is on there as well, right?

19 A. Yes.

20 Q. If someone reading this was interested in Banneker Watches
21 to any degree, you were the contact information, right?

22 A. Correct.

23 Q. That would inform us that you actually read this and were
24 familiar with the content, right?

25 MR. MASTER: Objection.

D3drlev2

Holmes - cross

1 A. Not necessarily.

2 Q. If someone called on the telephone and said is this Mr.
3 Holmes from Banneker Watches and the person were to ask a
4 question, you would have an answer or be able to find the
5 answer, correct?

6 A. Or I would advise them to one of my other officers who
7 handles the numbers.

8 Q. In other words, you wouldn't give them the numbers
9 yourself, the hypothetical person who called and asked about
10 the company?

11 A. Correct.

12 Q. Do you remember, sir, whether this was the business plan
13 that you brought with you to that August meeting in 2007 with
14 Mr. Levy?

15 A. You know what, it could be. Again, that's been six years
16 ago. I really don't remember.

17 Q. Let's turn to the page that we had on the ELMO before.
18 Let's look at the total retail revenue, growth of the revenue.
19 That's growth of the company, right?

20 A. Yes.

21 Q. At the time this was drawn in 2007, did you have any
22 revenue at all?

23 A. Yes.

24 Q. Do you remember, ballpark figure, do you remember what the
25 revenue was?

D3drlev2

Holmes - cross

1 A. I don't.

2 Q. Do you know whether it was in the millions or the hundreds
3 of thousands? Do you know that?

4 A. I don't. I know it wasn't in the millions. I don't know
5 exactly what it was, to be honest.

6 Q. At the time you were working on the designs you told us
7 about yesterday, correct?

8 A. Correct.

9 Q. At the time you were trying to enlist or enter into
10 contracts with celebrities, some of whom would have their faces
11 on the face of the watch, right?

12 A. No.

13 Q. When were you working with the celebrities?

14 A. That was my first company, Marquee Watch.

15 Q. That had nothing to do with Banneker? You weren't going to
16 execute that plan with respect to Banneker?

17 A. Yes, no, two separate companies.

18 Q. Two separate companies?

19 A. Right.

20 Q. 2009 had not yet occurred, because on the first page we saw
21 this was January 2007, right? Obvious point.

22 A. Say that again. I'm sorry.

23 Q. Yes. This document was created, as we saw from the first
24 page, in January of 2007, right?

25 A. I don't know that.

D3drlev2

Holmes - cross

1 Q. You saw the date on the exhibit in evidence that it was
2 January 2007?

3 A. I saw the date on it, but I don't know when it was put
4 together.

5 Q. Did you know that for the year 2009 you or one of your
6 officers or aides or employees projected revenue of \$8,424,000
7 in 2009?

8 A. I don't know that.

9 Q. Do you have any recollection whatsoever of these
10 projections on the bottom ending in 2013, that's this year,
11 that the revenues would be 341 million and 16,000 dollars? Do
12 you recall any number like that?

13 A. Again, sir, no, I don't.

14 Q. Let me ask you a question. When these documents were
15 prepared, whether you call them business plans or projections,
16 whatever you call them, you were trying to present an honest
17 picture, weren't you?

18 A. Two things. One is I don't remember this particular plan.

19 Q. Fair enough.

20 A. Accordingly and moreover, business plans are usually put
21 together with projections in mind and a goal that you would
22 like to hit. So that's correct.

23 Q. That was a goal or an objective; you wanted the company to
24 succeed, right?

25 A. Sure.

D3drlev2

Holmes - cross

1 Q. You wanted it to grow, right?

2 A. Yes.

3 Q. You saw an enormous potential for this company, didn't you?

4 A. I was in hopes of it.

5 Q. You had a good product, you believed in the product,
6 correct?

7 A. Yes.

8 Q. You liked the back story. You know what I mean, the back
9 story? The history of Mr. Banneker, who was an important
10 African-American figure and craftsman, isn't that right?

11 A. Yes.

12 Q. You thought that that back story, I'm just calling it a
13 back story, but the underlying idea was going to be very
14 helpful to selling these watches, right?

15 A. Hopefully, yes.

16 Q. You actually had a plan in mind to grow the company, and
17 the objective was to have a very, very successful enterprise,
18 is that a fair statement?

19 A. Sure.

20 Q. I show you what's been marked --

21 MR. SHARGEL: May I approach, your Honor?

22 THE COURT: Yes, you may.

23 Q. -- as Defense Exhibit A175 for identification. I ask you
24 to look at that and tell me if you recognize it.

25 A. It looks familiar.

D3drlev2

Holmes - cross

1 Q. What is the familiar take on it? What does it seem to be?

2 A. It says it's the Banneker executive overview.

3 Q. You were the chief executive, right?

4 A. Correct.

5 Q. I know some years have passed, but this is an overview that
6 you were familiar with, right?

7 A. Possibly.

8 MR. SHARGEL: Based on the answer, I offer it into
9 evidence.

10 MR. MASTER: Objection.

11 THE COURT: No objection? Objection or no objection?

12 MR. MASTER: Withdrawn. No objection.

13 THE COURT: A175 is received in evidence.

14 (Defendant's Exhibit A175 received in evidence)

15 MR. SHARGEL: May I publish it?

16 THE COURT: Yes, you may.

17 MR. SHARGEL: This is on the computer.

18 Q. I'd like to go to the page called "The Market." The pages
19 aren't numbered. "The market. Population of urban youth near
20 \$24 million." I'm sorry. Not dollars. Forgive me. Near
21 24 million, right, do you see that?

22 A. Yes.

23 Q. The focus or the objective based on the back story is that
24 you would be focusing sales attention on urban youth, is that a
25 fair statement?

D3drlev2

Holmes - cross

1 A. Not necessarily, no.

2 Q. The next bullet point is "Hip hop consumers are most
3 non-Hispanic whites." In other words, that was a target
4 population?

5 A. Not necessarily.

6 Q. Then why don't you tell us what the target population was.

7 A. Anybody who wore a watch or wears a watch globally was our
8 overall goal.

9 Q. You have in this exhibit the urban youth and the buying
10 power totals \$496 billion annually, right?

11 A. That is a statistic. Again, like I said, I don't
12 remember -- I'm not saying that this isn't things that we put
13 together. I can't say a hundred percent that that is or that I
14 approved that. So I'm trying to understand your point.

15 Q. Here is my point. When you went to Mr. Levy's home in Fort
16 Lauderdale, Florida, you were making an honest presentation,
17 weren't you?

18 A. That was my goal, yes.

19 Q. You certainly didn't want to fool anyone. You wanted to
20 give what you thought was an honest appraisal of the business,
21 right?

22 A. Yes.

23 Q. You wanted to give your idea of where the business may go,
24 how it may grow, and how to get there. You had that in mind,
25 correct?

D3drlev2

Holmes - cross

1 A. I'm sure.

2 MR. SHARGEL: Can we have the page that says "Banneker
3 Team."

4 Q. The Banneker team included you as founder and CEO, right?

5 A. Yes.

6 Q. Mr. Hardaway we know about already. How about Mr. Johnson
7 as the COO?

8 A. Yes, at that time.

9 Q. At the time Ron Hunter was vice president?

10 A. Yes.

11 Q. You had a long relationship with Ron Hunter, didn't you?

12 A. No.

13 Q. When did you meet him?

14 A. I think I may have met Ron in maybe 2005, maybe '6.

15 Q. He was involved with the company starting when?

16 A. I don't remember for sure.

17 Q. Brian Simpson was the director of sales?

18 A. Yes.

19 Q. So that was the core of the Banneker team, correct?

20 A. Pretty much.

21 MR. SHARGEL: Could we have the last page. I don't
22 know if it's the last page, but the summary. It may be the
23 last page.

24 Q. The summary page, the last page of this exhibit in
25 evidence, "Banneker Watch & Clock is poised for success now."

D3drlev2

Holmes - cross

1 You then have these bullets. "Support from Russell Simmons."

2 You had support from Russell Simmons, right?

3 A. Russell has always liked the company.

4 Q. Yes?

5 A. Yes.

6 Q. When you said "Support from Russell Simmons," what kind of
7 support did you have in mind?

8 A. I'm not saying I said this. I told you many times I don't
9 remember this.

10 Q. But we just saw the team as the Banneker team, do you
11 remember that, a moment ago?

12 A. Oh, yes, I saw it, yes.

13 Q. You were the head of the team, right?

14 A. I was the CEO of the company, correct.

15 Q. My question to you again, in this document or in
16 conversations with Mr. Levy, do you remember, sir, suggesting
17 that you had support from Russell Simmons?

18 A. I don't remember that conversation. I'm not saying it
19 didn't happen. I don't know specifically that I said that.

20 Q. Did you say that the manufacturing and prototypes, of the
21 watches of course, were in place?

22 A. Are you asking me was it in place or are you asking me
23 based upon this document? That's what I guess I'm trying to
24 figure out.

25 Q. Let's forget about the document.

D3drlev2

Holmes - cross

1 A. That would be good.

2 Q. Were they in place?

3 A. I'm sorry?

4 Q. Were they in place?

5 A. Yes.

6 Q. You had a major deal with Jostens, right?

7 A. Yes.

8 Q. There is no question about that, right?

9 A. That's correct.

10 Q. We'll come back to Jostens in a minute. You had major
11 celebrity endorsements, correct?

12 A. I had some major people that were involved, Tim Hardaway
13 being the one that was involved the most as a celebrity
14 endorser.

15 Q. You mentioned in direct testimony yesterday Beyonce.

16 A. Beyonce was involved, yes.

17 Q. You met with Beyonce?

18 A. Absolutely.

19 Q. You talked about your business and suggested that she may
20 want to design some of the watches?

21 A. Basically, the relationship with Beyonce was through
22 Jostens she designed a ring and we brought it to market.

23 Q. Actually brought it to market for retail sales?

24 A. Correct. Not retail sale, but it was through the Jostens
25 distribution.

D3drlev2

Holmes - cross

1 Q. Distribution still meant sales, right?

2 A. Correct.

3 Q. "First success with Miami Heat championship," what did that
4 mean?

5 A. We created a line of watches for the 2006 NBA champions,
6 the Miami Heat, and that watch was facilitated through Jostens.

7 Q. "Investment now assures a position when the company becomes
8 well known." What did that mean?

9 A. I don't know.

10 MR. SHARGEL: Can we take that off, please.

11 Q. You told us yesterday, and reference was made to it again
12 today, that you had an agreement with Jostens, right?

13 A. Yes.

14 Q. That was an agreement that was signed and executed, right?

15 A. Correct.

16 Q. I show you what's been marked for identification as A177,
17 Defense Exhibit A177. I ask you to take a look at that and
18 tell us whether you recognize it.

19 A. Yes, I do.

20 Q. What do you recognize it to be?

21 A. It appears to be the agreement that we had with Jostens.

22 Q. The agreement you had with Jostens, we don't have to put it
23 up on the ELMO or the computer, tell the jury what the basic
24 understanding was.

25 A. It was a relationship with my consulting company, Esteemed

D3drlev2

Holmes - cross

1 Enterprises. We entered into an agreement with Jostens to
2 become the urban provider for grad watches/clocks/jewelry with
3 the different classes on it. We also brought in in that deal,
4 we brought in Russell Simmons, Comora Lee Simmons, and Beyonce
5 to design urban hoodies and T-shirts, and Beyonce additionally
6 designed a ring.

7 Q. This was, obviously, a very valuable contract, right?

8 A. Yes.

9 Q. Were you or were you not doing the manufacturing itself in
10 connection with the product that Jostens would distribute,
11 retail sales?

12 A. Yes, we were doing the manufacturing of the class jewelry.

13 Q. Whatever happened to the Jostens contract?

14 A. We had a one-year deal. They didn't renew the contract
15 after one year. We kind of severed our relationship.

16 Q. That was the end of that?

17 A. I'm sorry?

18 Q. That was the end of that, no more relationship with
19 Jostens?

20 A. Correct.

21 Q. When did that happen?

22 A. Sometime at the end of 2008, 2009 I think it was, if I
23 remember.

24 Q. That's your best recollection?

25 A. Yes, my best recollection.

D3drlev2

Holmes - cross

1 Q. I'm switching to a different topic now. Do you remember
2 telling us yesterday about an accountant that you had that
3 helped you with your books and records of the company?

4 A. Yes.

5 Q. Do you remind the jury of the name of the accountant.

6 A. Roy Gentry.

7 Q. Specifically directing your attention to the calendar year
8 2008, Roy Gentry or his firm -- what was it, an accounting
9 firm?

10 A. He is an accountant, yes.

11 Q. Certified public accountant, right?

12 A. Yes, he is.

13 Q. Roy Gentry did a year-end review for calendar year, as I
14 said a moment ago, calendar year 2008?

15 A. I believe so, yes.

16 Q. I believe that this was put in evidence yesterday as
17 Government Exhibit 301-2.

18 MR. SHARGEL: With the Court's permission, because we
19 have it in the computer, I'm going to ask that this we use
20 Defense Exhibit A187, as we have done before.

21 THE COURT: 187 and 301-2 are the same?

22 MR. SHARGEL: Yes.

23 THE COURT: All right.

24 MR. SHARGEL: If we could put the first page just so
25 we orient ourselves as to what this is.

D3drlev2

Holmes - cross

1 Q. This is dated March 3, 2009. It is addressed to you. You
2 see that, right?

3 A. Yes.

4 Q. Do you have a recollection of this letter, by the way?

5 A. I have a recollection of it because, yes, it looks like
6 what my accountant compiles, yes.

7 Q. That is Roy Gentry's name on the top and his logo, right?

8 A. Yes.

9 Q. It is addressed to you, and the first paragraph explains
10 what is contained in the document. "I have compiled the
11 accompanying balance sheet of Banneker as of December 31,
12 2008." You see that, right?

13 A. I do.

14 Q. I want to ask you some questions, if I may, going to the
15 ledger portion. All of the expenses of the company, checks
16 written, are contained in this report, right?

17 A. I'd like to think so. It is my accountant's job to do. So
18 yes.

19 Q. Referring to the general ledger, your business, like any
20 other business, had a general ledger, right?

21 A. When you say a general ledger, what do you mean?

22 Q. Money coming in and money going out.

23 A. Yes.

24 Q. You had that, right?

25 A. Yes.

D3drlev2

Holmes - cross

1 Q. Let's go to page 3 of this general ledger. If we can focus
2 in on the date of May 15, 2008. Do you see where it says May
3 15, 2008? And if we have to go back, I'm happy to do it for
4 you, but this is the deposit column. Do you see that?

5 A. Yes.

6 Q. Money being deposited into the account. The last column
7 you know to be disbursements, money sent out of the account,
8 correct?

9 A. Again, I'm not an accountant, so I don't know that.

10 Q. But even as an ordinary person, not an accountant, do you
11 see the date on the left 5/15/08, right?

12 A. Uh-huh.

13 Q. Do you see that there is a code number and then "general"
14 and then "Mazuma Holding Corporation"? Do you see that?

15 A. I see that.

16 Q. You were asked questions yesterday about Mazuma Holding
17 Corporation, right?

18 A. Correct.

19 Q. Mazuma Holding Corporation is someone that you did some 504
20 deals with, right?

21 A. Correct.

22 Q. You told that you say yesterday, right?

23 A. Yes.

24 Q. You explained your own understanding of the 504 deal,
25 right?

D3drlev2

Holmes - cross

1 A. I believe so.

2 Q. It was a fast way to get cash which the business needed,
3 right? Fair statement?

4 A. It was a way, to my knowledge and remembering back, a way
5 to, yes, bring funding into the company.

6 Q. In return for the funding that came into the company, you
7 would issue shares? We saw yesterday the 80,000 shares and the
8 333,000 shares. You would issue shares, right?

9 A. Correct.

10 Q. You would get cash in return for the shares, right?

11 A. Yes.

12 Q. There was a bad side of the 504 transaction, is that a fair
13 statement?

14 A. A what now?

15 Q. A bad side, a negative, if you will.

16 A. Not that I'm aware of.

17 Q. Not that you're aware of? Did you know that to keep
18 issuing stock on behalf of the company, you were diluting the
19 shares that other shareholders held?

20 A. I wasn't totally aware of that, no.

21 Q. Didn't you tell us yesterday that you had some issues or
22 some disputes with other people involved in your company about
23 504 transactions?

24 A. I definitely had some conversations about that, yes.

25 Q. Conversations where the person with whom you were

D3drlev2

Holmes - cross

1 conversing was not very happy about the 504 transactions,
2 right?

3 MR. MASTER: Objection.

4 A. Yes.

5 THE COURT: Overruled.

6 Q. The answer is you remember that?

7 A. I think I do, yes.

8 Q. On this date, on May 15, 2008, Mazuma Holding, there is a
9 deposit recorded of \$50,000. You got that, right?

10 A. Yes, I do.

11 MR. SHARGEL: If we can turn to the next page,
12 Jennifer. Now I'd like to focus and highlight May 29, 2008.
13 No, a little later.

14 Q. May 29, 2008, you get another \$50,000 from Mazuma Holding,
15 right?

16 A. I'm seeing it there again. I don't remember when all it
17 happened, but I'm looking at it, yes.

18 Q. You were continuing to do 504 transactions, right?

19 A. I did a few 504s, a couple, I know.

20 Q. The only transactions you had with Mazuma Holdings was 504
21 transaction, right?

22 A. That's correct.

23 Q. So \$50,000 on May 29th. Then do you remember in July of
24 2008 getting a letter from Ron Hunter?

25 A. I don't, no.

D3drlev2

Holmes - cross

1 Q. Ron Hunter, as we saw just a little while ago, according to
2 the Banneker information of the executive team, the Banneker
3 team, he was the vice president, right?

4 A. Yes, he was at that time.

5 Q. Let me show you what's been marked -- well, you know that
6 you received a letter after that second 504 transaction that we
7 saw up on the screen? You received a letter from Ron Hunter
8 saying stop doing these 504 transactions, right?

9 A. Absolutely not.

10 Q. Positively not?

11 A. I don't remember it. You're telling me I remember it. I'm
12 telling you I don't.

13 Q. Let me show you what's been marked for identification as
14 A199. I put it in front of you. I ask you to take a look at
15 that and tell me if you recognize it, sir.

16 A. I don't recognize it.

17 Q. Do you recognize your signature on the bottom?

18 A. I actually do not.

19 Q. Sir, is it your testimony by your oath that that is not
20 your signature on the bottom?

21 A. My testimony under oath is that I don't recognize it.

22 Q. Sir, would you be able to recognize it if it were your
23 signature?

24 A. It depends on if I was able to recognize it or not, and I
25 can't recognize that as being my signature.

D3drlev2

Holmes - cross

1 Q. Is it your testimony that it could be your signature but
2 you don't recognize it as your signature?

3 A. That is my testimony, counselor, that I don't recognize
4 that as being my signature.

5 Q. Is it your testimony, sir, that someone forged your
6 signature on that document?

7 A. My testimony is just what I said earlier.

8 Q. And you have no recollection as you sit here now of
9 receiving that letter?

10 A. I do not.

11 Q. Do you have any recollection independent of that letter
12 that Ron Hunter was complaining to you and asked you to agree
13 that you would stop doing these 504 transactions?

14 A. I do not.

15 Q. You have no recollection of that?

16 A. No recollection of that.

17 MR. SHARGEL: Now if we could have page 5 on the
18 screen?

19 THE COURT: Is it in evidence?

20 MR. SHARGEL: Yes, it is in evidence. It is part of
21 the same exhibit I have been using.

22 THE COURT: This is not A199 you're talking about?

23 MR. SHARGEL: No, no. Could we focus on the date of
24 July 30, 2008.

25 Q. July 30, 2008, as reflected in the general ledger that is

D3drlev2

Holmes - cross

1 now in evidence, you received another \$50,000 from Palm
2 Capital, which you knew to be David Levy, right?

3 A. It appears to be, yes.

4 Q. It appears to be. Sir, looking at that, do you recall that
5 after doing those two 504 transactions, David Levy stepped in
6 and gave you another \$50,000?

7 A. Again, that's what it appears to look like, yes.

8 Q. Even though there had been some conversation -- by the way,
9 you said earlier conversation about 504 transactions. With
10 whom did you converse, sir?

11 A. In what respects?

12 Q. Conversation, words coming out of your mouth and words
13 coming out of the other person's mouth. With whom did you
14 confer?

15 A. I don't get the question.

16 THE COURT: He wants to know whom you talked to about
17 the Mazuma transaction.

18 A. I don't remember.

19 Q. Do you remember, sir, that even after David Levy stepped in
20 that summer of 2008 and gave you another \$50,000, you went
21 ahead and did another 504 transaction, didn't you?

22 A. That's what it appears to be.

23 Q. Let me direct your attention to October 30th of the same
24 year, 2008, October 30, 2008. October 30, 2008, after you had
25 discussions about 504 transactions, you go ahead and you do

D3drlev2

Holmes - cross

1 another one, right, another one, Mazuma Holding Corporation,
2 \$40,000?

3 A. OK.

4 Q. You did that transaction, didn't you?

5 A. I told you I did some 504s. I don't remember exactly which
6 ones or when.

7 Q. You used email back in 2008, didn't you?

8 A. Yes.

9 Q. You sent emails and you received emails, right?

10 A. Yes.

11 Q. You received emails from, among other people, David Levy,
12 right?

13 A. I'm sure I did.

14 Q. Do you remember David Levy sending you an email discussing
15 your conduct in connection with the 504 transactions?

16 A. I don't specifically remember, no.

17 Q. Do you remember David Levy telling you that you were
18 ruining the company?

19 A. I don't remember that. I remember that he wasn't happy
20 about me doing 504s, like I said yesterday.

21 (Continued on next page)

22

23

24

25

D3DLLEV3

Holmes - cross

1 BY MR. SHARGEL:

2 Q. But beyond not being happy, do you remember, sir, him
3 telling you that you were ruining and destroying and decimating
4 your own company with these 504 transactions?

5 A. No, I don't.

6 Q. No recollection of that. I show you what's been marked as
7 Defendant's Exhibit A200A. I put that before you and I ask you
8 if you recognize that, sir?

9 THE COURT: All right, Mr. Shargel.

10 Q. Are you still reading it?

11 A. I'm still looking it over.

12 Q. Have you had a chance to look it over?

13 A. I have.

14 Q. Did you -- does that refresh your recollection that David
15 Levy had that communication with you in November of 2008?

16 A. You know, I'm not saying it didn't happen, but I can't say
17 I specifically remember it. And that doesn't, you know, make
18 me remember it or help me to remember it.

19 Q. Well, do you remember receiving such an email? That's the
20 best I could ask. Do you remember receiving such an email?

21 A. I don't.

22 Q. Well, you testified yesterday at the end of your direct
23 testimony that David Levy stopped funding you, do you remember
24 that, stopped getting money from David Levy?

25 A. I don't know if I said that.

D3DLLEV3

Holmes - cross

1 Q. Do you remember testifying that the company was hurt
2 because David Levy didn't give you more money; do you remember
3 saying that?

4 A. I remember saying that there were spurts of time that I was
5 supposed to receive money that I didn't receive money, but I
6 never said he stopped. I never said I stopped receiving money,
7 so.

8 Q. You certainly didn't receive any more money in 2009 and
9 '10, '11, and '12, did you?

10 A. Oh, no, I did not.

11 Q. In other words, David Levy left you, right?

12 A. At some point I didn't receive any more money.

13 Q. And you didn't receive any more money and you know full
14 well as you sit there now you didn't receive more money because
15 David Levy was disgusted with your conduct?

16 A. I can't say that that's correct.

17 Q. And you can't say it's not correct, right?

18 MR. MASTER: Objection.

19 THE COURT: Sustained.

20 MR. SHARGEL: I have no further questions.

21 THE COURT: OK, Mr. Srebnick.

22 MR. SREBNICK: Yes, your Honor. May it please the
23 Court, good afternoon, everybody.

24 CROSS-EXAMINATION

25 BY MR. SREBNICK:

D3DLLEV3

Holmes - cross

1 Q. Mr. Holmes, good afternoon. My name is Howard Srebnick. I
2 have a few questions. I represent Donna Levy.

3 A. OK.

4 Q. I'd like to ask you first about the business address for
5 Banneker. Did it have a business address in Denver, Colorado?

6 A. Correct.

7 Q. Was that the 1660 Albion Street, Suite 309, in Denver?

8 A. Correct.

9 Q. Was that an office that you used for Banneker?

10 A. Correct.

11 Q. And is the zip code 80222?

12 A. Correct.

13 Q. And who had the keys to that office, who was stationed in
14 that office?

15 A. Myself.

16 Q. And, for example, if mail would come, you would have access
17 to receive the mail at that location?

18 A. Yes.

19 Q. I'd also like to ask you about phone numbers associated
20 with the company and/or yourself back in the time period 2007,
21 '08, and as late as 2009.

22 The phone number (303)856-3135, does that number
23 correspond to either you or Banneker?

24 A. Definitely not during that time, no.

25 Q. Does that number sound familiar to you at all?

D3DLLEV3

Holmes - cross

1 A. It sounds familiar but it was never a business number.

2 Q. Is 303 the area code for Denver?

3 A. It's one of them, yes.

4 Q. How about (319)230-9564?

5 A. Yes.

6 Q. And would that be a phone number either associated with you
7 or with Banneker?

8 A. Yes.

9 Q. Is that a cell phone perhaps?

10 A. It is.

11 Q. Was that a cell phone, your personal cell phone at that
12 time?

13 A. Yes, it was.

14 Q. Now, Banneker, in the time period that we're discussing
15 when it became public, Donna Levy was handling press releases
16 for the company?

17 A. Yes.

18 Q. Handling investor relations for the company?

19 A. Yes.

20 Q. And that was a role that essentially had been delegated to
21 her by Banneker, correct?

22 A. That was a role that I don't know if it was delegated or it
23 was decided amongst us all, but I know that was her skill set
24 and her involvement in our relationship.

25 Q. So it was agreed upon, rather than use the word delegate,

D3DLLEV3

Holmes - cross

1 it was agreed upon that would be Donna's role, correct?

2 A. Yes.

3 Q. Fair enough. Do you recall that from time to time Donna
4 and yourself would correspond by email so that you could see a
5 press release before it would go out?

6 A. Yes.

7 Q. I'd like to go through a few with you. I'd like to pull up
8 what's been marked as Exhibit A190?

9 MR. SREBNICK: A190, is that available?

10 Q. Mr. Holmes, if you could follow along, do you recognize
11 your email address, Derrick_Holmes@yahoo.com?

12 A. Yes.

13 Q. And do you recognize the email address LUVMEE40@aol.com; do
14 you remember that was Donna Levy's email address?

15 A. Yes, I do.

16 Q. OK, good. Now if we could go to the sort of the second
17 half. There's a straight line going across.

18 MR. SREBNICK: And if we could perhaps just enlarge
19 the whole center of the email from further down.

20 THE COURT: Mr. Srebnick, it's not on the screen.

21 MR. SREBNICK: First I'd like to move it into
22 evidence, if I could.

23 MS. COHEN: One moment, your Honor. Just trying to
24 find our copy.

25 MR. SREBNICK: If we could publish A190 now that it's

D3DLLEV3

Holmes - cross

1 been offered and received.

2 THE COURT: Was there an objection?

3 MR. MASTER: No objection, your Honor.

4 THE COURT: A190 is in evidence then.

5 (Defendant's Exhibit A190 received in evidence)

6 MR. SREBNICK: If you could scroll down a little bit.

7 Fine. Good.

8 Q. This is what I'll call the bottom half of the email. Do
9 you see that it's dated July 29, 2008?

10 A. Yes.

11 Q. Are you able to see on your screen?

12 A. I am. I'm looking at the top though opposed to the bottom,
13 but, yes, I see it.

14 Q. Maybe it's not synced. If you have any problem, let me
15 know and we'll work it out.

16 A. OK.

17 Q. Do you see it's from Donna Levy's email address and it's
18 addressed to your email address, you see that?

19 A. I do.

20 Q. The subject says, front page website approve, make sure
21 every word 100 percent accurate; do you see that?

22 A. Uh-huh, yes.

23 Q. If we could now just for ease of reference, you see the
24 headline of the proposed press release, Banneker Inc. --

25 MR. SREBNICK: Stop moving it if we could. It's

D3DLLEV3

Holmes - cross

1 moving again. Is it just my copy or is everybody's moving?

2 THE COURT: What's the question?

3 MR. SREBNICK: I'll have to go over here, Judge,
4 because mine is moving. It's a moving target.

5 Q. Do you see the headline, Banneker Inc. CEO Derrick Holmes
6 joins forces with hip hop fashion moguls and launches high
7 school jewelry and apparel with urban attitude in an
8 unprecedented business venture, correct?

9 A. Yes.

10 Q. And if we go to the top of the email, you were able to give
11 Donna your input and your input was: Looks great, go with it,
12 Derrick.

13 You see that?

14 A. Yes.

15 Q. If we could publish 103-1, Government Exhibit 103-1, do you
16 see it has the same headline, Banneker Inc. CEO Derrick Holmes
17 joins forces, do you see that?

18 A. Yes.

19 Q. And so with regard to this press release, which we can see
20 on the screen says July 29, 2008, it appears that an email was
21 sent to you, you had a chance to look at it, it then went on
22 the wire for the public to see, correct?

23 A. Yes.

24 Q. And do you recall that happening from time to time where
25 you and Donna would exchange discussions or comments about the

D3DLLEV3

Holmes - cross

1 press release and then it would go on the wire?

2 A. Yes.

3 Q. Now, these events occurred some years ago. Is it fair to
4 say your recollection may not be perfect from that time period;
5 fair to say?

6 A. That is fair to say.

7 Q. Because as I recall your testimony yesterday, the
8 prosecutor asked you about a 12 to one stock split; do you
9 remember some discussion about that?

10 A. Yes.

11 Q. And as I recall your testimony, they asked you whether you
12 were familiar were the press release regarding that 12 to one
13 stock split; do you remember those questions?

14 A. Yes.

15 Q. And if we could put the press release on the screen, 103-3.

16 Now, Mr. Holmes, if you think back, do you remember
17 that before this press release went out, you and Donna
18 exchanged emails about announcing the 12 to one stock split?

19 A. I can't say I remember a hundred percent but I can't say,
20 you know, that we didn't.

21 MR. SREBNICK: I'd like to offer into evidence at this
22 time A196. A196.

23 MR. MASTER: No objection.

24 THE COURT: A196 is received in evidence.

25 (Defendant's Exhibit A196 received in evidence)

D3DLLEV3

Holmes - cross

1 MR. SREBNICK: I'd like to publish A196 at this time.
2 And if we could, right where your cursor is now, if we can go
3 from that part of the email down. Yes.

4 Q. Do you see this is an email dated February 2, 2009, from
5 Donna to you, regarding the announcement of the 12 to one
6 forward stock split?

7 A. Yes.

8 Q. Does that refresh your memory that there was a discussion
9 via email about the announcement of the 12 to one stock split?

10 A. You know, I don't doubt it.

11 Q. OK. Fair enough. And it announces the exact words that
12 appear, and we'll just have to compare it, but it announces
13 Banneker Inc. announces board of director approval of a forward
14 stock split with a 12 to one ratio; do you see that?

15 A. Yes.

16 Q. Now, this proposed press release dated February 2, 2009 has
17 a sound bite or a I guess a quote attributed to you, "This
18 forward stock split is intended to lay the groundwork for the
19 anticipated growth of the company, said chairman Derrick
20 Holmes. It is also part of our ongoing efforts to improve
21 trading liquidity, broaden ownership, promote capital
22 investment, and enhance shareholder value."

23 Do you see that on the --

24 A. Yes, I see that.

25 Q. Now, if we highlight the top of it or just enlarge it

D3DLLEV3

Holmes - cross

1 perhaps, do you see on the same day, February 2, 2009, you
2 responded to Donna: It looks good. Go with it, Derrick.

3 Do you see that?

4 A. I see that.

5 Q. And then if we could then publish the actual press release
6 that the government offered, 103-3 -- and thank you for
7 assisting -- do you see it's word for word what you had
8 approved in the email?

9 A. Again, like I said, I don't remember it but I see it.

10 Q. Perfect. OK. Now, if we could then go back to the email,
11 Jen, if we could publish A196, now, there's a few things I want
12 to discuss. If we can just roll down, this is now you're
13 looking at the email that Donna sent to you that you said go
14 with it.

15 Do you see that it provides a little summary about the
16 company, Banneker Inc. is a manufacturer and distributor of
17 quality watches and fine jewelry; do you see that?

18 A. I do.

19 Q. Based on the legend of Benjamin Banneker?

20 A. Yes.

21 Q. And speaking of Mr. Benjamin Banneker, is Mr. Banneker or
22 his family associated with the company in any way?

23 A. No.

24 Q. Did you have to seek their approval or authorization to use
25 the name Banneker?

D3DLLEV3

Holmes - cross

1 A. No. I own the trademark to Banneker.

2 Q. You just trademarked the name?

3 A. Correct.

4 Q. But you didn't have to get any prior permission or
5 authorization from the Banneker family to do that?

6 A. No.

7 Q. Correct?

8 A. Correct.

9 Q. Then at the bottom of the proposed press release in the
10 email, there's a section called safe harbor statement; do you
11 see that?

12 A. Yes.

13 Q. And then it reads, except for historical information
14 contained herein, the matters set forth above may be
15 forward-looking statements that involve certain risks and
16 uncertainties that could cause actual results to differ from
17 those in the forward-looking statements.

18 You see that, right?

19 A. Yes.

20 Q. And then the jury can read it for itself.

21 But that was all incorporated into the press release
22 that ultimately was disseminated to the public, correct?

23 A. Again, I don't really totally remember to be honest.

24 Q. But you see it, the government asked you about the press
25 release?

D3DLLEV3

Holmes - cross

1 A. I'm looking at it, yes.

2 Q. If we could just go to the bottom of the page, there's a
3 number there, USAO, do you see that number here?

4 A. Uh-huh.

5 MR. SREBNICK: Judge, that's to be redacted later on.
6 I just wanted to make sure that's not part of the original
7 document.

8 THE COURT: It's an identifier for the document?

9 MR. SREBNICK: It's an identifier for the document for
10 us, yes.

11 Q. If we could go to the top, this document, was it shown to
12 you before today in preparation for your testimony here?

13 A. It looks familiar that I may have seen it.

14 Q. OK. Yesterday when the prosecutor was asking you questions
15 about this 12 to one stock split and what you knew about it, do
16 you recall if the prosecution in preparing you for the
17 testimony showed you this document to refresh your memory?

18 A. I believe so.

19 Q. So the prosecutor you recall having this document?

20 A. I believe so, yes.

21 Q. Now, do you recall, does that refresh your recollection
22 that there was a meeting to approve the 12 to one stock split?

23 A. Again, man, it was a long time ago. So I don't want to
24 just -- I'm not going to send you long and throw short, you
25 know. I don't remember for sure.

D3DLLEV3

Holmes - cross

1 Q. But now having had a chance to look at the emails, etc., is
2 it fair to say that the 12 to one stock split was something
3 that Banneker and yourself had approved before it was released
4 to the public on February 6? That's the date of the press
5 release.

6 A. You know, I do recall that we -- that I spoke about it, you
7 know, that we had spoke about a 12 for one split which, you
8 know, I didn't really understand it and know all about it and
9 it was a long time ago, but that's safe to say.

10 MR. SREBNICK: If we could publish 103-36, and if we
11 can highlight the section right in here from using the green.
12 That's great.

13 Q. Do you see that this is a press release from February 6,
14 2009, and it just announces, it has come to our attention that
15 over the past few days, some investors of Banneker are confused
16 as to when the actual split takes place. All shareholders on
17 record as of the close of the market day Friday, February 6,
18 2009, will be eligible for the 12 shares for every one share
19 owned. We hope this statement will address those concerns.

20 Do you see that?

21 A. Yes.

22 Q. You had told the jury yesterday that from time to time you
23 would get calls from investors; do you recall telling the jury
24 that?

25 A. Yes, I recall.

D3DLLEV3

Holmes - cross

1 Q. And that eventually the decision was made to just refer
2 those type of investor relation calls over to Donna, correct?

3 A. As I remember, I believe that is true.

4 Q. Do you recall if there had been some investors calling to
5 get a better handle on when is this stock split taking place
6 because the press release went out and there was some questions
7 among investors; do you recall that one way or the other?

8 A. I don't.

9 Q. Do you recall though that the press release went out to
10 address those concerns?

11 A. You know, I really don't. I don't really remember this
12 press release.

13 Q. Would you agree though that it's consistent with the
14 earlier press release of just announcing the February 6, 12 to
15 one stock split?

16 A. You know, it looks familiar to the other one, so.

17 Q. I'd like to show you Government Exhibit 103-5. Do you
18 remember the government asking you about this press release?

19 MR. SREBNICK: Is this in evidence, I believe, if I
20 could ask the prosecutors, 103-5?

21 THE COURT: 103-36?

22 MR. SREBNICK: I'm going to offer 103-5, the press
23 release. It's in already.

24 Q. Banneker unveils for the first time the Aristocrat.

25 Do you recall what the Aristocrat was?

D3DLLEV3

Holmes - cross

1 A. Yes.

2 Q. Could you tell us what that was?

3 A. The Aristocrat was a clock that I designed. It was a big
4 grandfather clock, stood seven and a half feet tall, had
5 crystals in the face of the clock.

6 Q. The first paragraph of the press release describes some of
7 the attributes, some of the features of that clock?

8 A. Yes.

9 Q. And in one line it announces the retail price is \$10,000;
10 do you see that right in the middle?

11 A. Yes.

12 Q. The following paragraph talks about Banneker, his memory,
13 and then talks about a cognac ad.

14 Do you remember the cognac ad?

15 A. Yes.

16 Q. I think I got that in my next folder so we'll get to that
17 in a moment.

18 And then do you see that the press release at the
19 bottom says, please view Banneker Inc.'s new Swarovski crystal
20 grandfather clock now by visiting
21 <http://www.wallstreetpremiere.com/Aristocrat.php>, where you can
22 also sign up for continuing alerts on Banneker Inc.

23 Do you see that?

24 A. Yes, I see it.

25 Q. You told the jury yesterday that you thought you had

D3DLLEV3

Holmes - cross

1 remembered the name Wall Street Premiere, that you heard it
2 somewhere; do you remember that?

3 A. I believe so.

4 Q. And is this consistent with your recollection that you had
5 heard about Wall Street Premiere back in February of 2009?

6 A. You know, I don't remember when, I don't remember where I
7 heard it, but I mean I remember the name sounding familiar. I
8 do remember that.

9 Q. OK. Let me show you --

10 MR. SREBNICK: First let me move into evidence at this
11 time A193. It's emails, and it's in particular page 2, if I
12 could offer it at this time.

13 THE COURT: Ladies and gentlemen, why don't we take a
14 short ten-minute recess.

15 (Continued on next page)

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D3DLLEV3

Holmes - cross

1 (Jury not present)

2 (Witness not present)

3 THE COURT: Mr. Holmes had to take a comfort break.
4 Anything else?

5 MS. COHEN: I'm not sure, your Honor. We'll confer
6 and we'll tell Marlon if we need to raise something with you.

7 MR. MASTER: I think we'll be fine.

8 THE COURT: All right.

9 (Recess)

10 MR. SHARGEL: Judge, may I say one thing. There was a
11 issue raised about what I viewed as a prior inconsistent
12 statement, and apparently the government's view, although
13 expressed informally, was that they didn't believe the
14 statement was inconsistent. The last time, and we're just
15 about to sign and maybe ten more minutes and we'll resolve the
16 other issue with respect to Mr. Georgiadis.

17 But with respect to this witness, I can hand up to the
18 Court at a later time perhaps, if you don't want to take the
19 jury's time, but I can hand up to the Court the disclosure in
20 the December 3 letter that we received, the so-called Giglio
21 disclosure, and I think that you would agree that there's a
22 conflict between "I don't remember" and denying it to the U.S.
23 Attorney's Office. So that's my -- because one way or the
24 other, I'd either offer it in evidence or we could stipulate.

25 MR. MASTER: And, your Honor, just on that point, I

D3DLLEV3

Holmes - cross

1 know we haven't had a full opportunity to discuss this because
2 I think we're going to reach a factual stipulation concerning
3 Mr. Georgiadis, but I just wanted to make our office's position
4 clear having consulted with our appeals unit, this is certainly
5 not a situation that is analogous to U.S. v. GAF where the
6 government itself as a party takes a particular litigation
7 position and then tries to change it around.

8 It's quite common for us to make pretrial disclosures
9 as 3500 material or in Giglio, and I don't think there is a
10 complaint about the quality or comprehensiveness of our Giglio
11 disclosure. It is not, however, the case that a Giglio
12 disclosure is an admission of the government party. It's
13 simply part of the government's constitutional obligation,
14 which we take very seriously in this case and every other case,
15 and it gives the defense a basis to inquire and to
16 cross-examine, as they did with Mr. Holmes and as they did with
17 Mr. Georgiadis.

18 THE COURT: If you can work it out, you'll work it
19 out. If you can't, then Mr. Shargel will make what he feels is
20 appropriate in the circumstances.

21 MR. MASTER: Thank you, your Honor.

22 MR. SHARGEL: Thank you, Judge.

23 THE COURT: Want to see if the jury is ready?

24 Mr. Srebnick, have you been able to work out your
25 evidentiary?

D3DLLEV3

Holmes - cross

1 MR. SREBNICK: I think the government has no objection
2 to the email.

3 THE COURT: All right. We'll see if the jury ready.
4 Can you get Mr. Holmes.

5 (Continued on next page)

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D3DLLEV3

Holmes - cross

1 (Jury present)

2 THE COURT: Please be seated.

3 Mr. Srebnick.

4 MR. SREBNICK: Thank you, Judge. May it please the
5 Court, good afternoon again.

6 I'd like to begin with A193, which I believe there's
7 no objection, Judge. I move it at this time.

8 THE COURT: A193 is in evidence then.

9 (Defendant's Exhibit A193 received in evidence)

10 MR. SREBNICK: I'd like to go to page 2 of the email
11 exchange. Are we able to get it on the big screen?

12 THE COURT: It's on the small screen.

13 MR. SREBNICK: It's on the small screen in the jury
14 box? Great.

15 BY MR. SREBNICK:

16 Q. And, Mr. Holmes, you have it on your screen?

17 A. I do.

18 Q. If we can enlarge the bottom half of the email or the first
19 half. There we go. OK.

20 Mr. Holmes, do you see it's an email dated February 7,
21 2009, from Donna to you?

22 A. Yes.

23 Q. The subject, ad premiering grandfather clock; do you see
24 that?

25 A. Yes.

D3DLLEV3

Holmes - cross

1 Q. If I could ask you to read that, you can read it to
2 yourself, everybody can read it to themselves, and satisfy
3 yourself that this is the proposed press release which later is
4 made public and we saw it as Government Exhibit 103-5?

5 A. I have.

6 Q. OK. And you see that it's the same as the later press
7 release that comes out?

8 A. Yes, it looks similar to it, or...

9 Q. OK, and we can just compare word for word later, but you
10 see it talks about the retail price of \$10,000, talks about the
11 honor of Benjamin Banneker, and then indicates at the end that
12 they can visit the website Wallstreetpremiere.com to sign up
13 for continuing alerts on Banneker Inc.; you see that?

14 A. Yes.

15 Q. If we could go to the top of the screen, same date,
16 February 7, 2009, you see that at 20:51, that's military time,
17 that would be 8:51, I believe, p.m., does that sound right, did
18 I get that right, 20:51 would be 8:51 p.m., does that sound
19 right?

20 A. You're asking me?

21 THE COURT: He's asking you.

22 A. Yes.

23 THE COURT: Military time.

24 MR. SREBNICK: Military time, I think that's what they
25 call it.

D3DLLEV3

Holmes - cross

1 THE WITNESS: OK.

2 Q. It says this is an email from Derrick to Donna that says,
3 This looks great to use in our upcoming PR ad. Also, Donna,
4 always use Derrick M. Holmes. And it was sent from your
5 BlackBerry?

6 A. Yes.

7 Q. And Derrick M., you wanted your middle initial to be
8 included whenever your name is mentioned, correct?

9 A. Yes.

10 Q. And so now if we publish 103-5, the very first line of the
11 press release now includes your middle initial M, Derrick M.
12 Holmes; do you see that?

13 A. Mm-hmm.

14 THE COURT: Is that yes?

15 A. Yes.

16 Q. Now if we could go to back to the Defendant's Exhibit A193,
17 page 1 of that document, I'd like to show you some email
18 exchange from earlier. This would be in 2008.

19 MR. SREBNICK: I think we can probably get the whole
20 thing on this right there. Great. Thank you.

21 Q. Do you see that this is an email that you forwarded to
22 Donna Levy regarding a Snoop Dogg video featuring the Banneker
23 clock?

24 A. Yes.

25 Q. It comes from a Kevin Barkey at Firm Entertainment; do you

D3DLLEV3

Holmes - cross

1 know who that is?

2 A. I think that was one of Snoop Dogg's people that worked,
3 you know, in his camp.

4 Q. And just for the record, tell us who Snoop Dogg is so that
5 it's part of the record. Who is Snoop Dogg?

6 A. Snoop Dogg is one of the top premier rappers of all time.
7 He goes by the name Snoop Doggy Dogg. His mom named him Snoop
8 when he was a kid and that name stuck with him.

9 Q. And it is a helpful situation for Banneker to have someone
10 of Snoop or Snoopy, or whatever he likes to be called, have his
11 name associated with a product?

12 A. Yes.

13 Q. Maybe not Snoopy. Forgot about that.

14 OK. In any event, it was important enough that you
15 forwarded a link on You Tube to Donna regarding the Snoop Dogg
16 video, right?

17 A. Yes.

18 Q. Now, the video, did it portray this -- is he a hip hop
19 artist; is that a correct statement?

20 A. Yes.

21 Q. It portrayed the hip hop artist Snoop Dogg with your
22 product, the Banneker clock?

23 A. Yes, it did.

24 Q. And that's an important event for your company, correct?

25 A. Yes.

D3DLLEV3

Holmes - cross

1 Q. Now I'd like to show you Government Exhibit 103-6.

2 MR. SREBNICK: Is that in evidence already?

3 MR. MASTER: Yes.

4 Q. If we could publish 103-6, do you remember the press
5 release announcing Snoop Dogg had used the grandfather clock,
6 the Aristocrat, in his video, the new hit song "Those Gurlz"?

7 A. You know, I remember, I remember us putting things
8 together. I don't remember specific, but I know that we, you
9 know, had worked on that, Donna and I.

10 Q. Those Gurlz, is that the name of the song?

11 A. Yes, that was the name of the song and the video.

12 Q. Earlier I asked you about some cognac ad. I'd like to show
13 you a document related to that.

14 MR. SREBNICK: I'd like to offer at this time A195.

15 Your Honor, at this time I offer A195.

16 THE COURT: OK. A195 is in evidence.

17 (Defendant's Exhibit A195 received in evidence)

18 MR. SREBNICK: If we could publish A195.

19 Q. OK. Do you see what's not a very good reproduction, but
20 you see Snoop over here?

21 A. Yes.

22 Q. OK. And do you see this is an email from Donna to you with
23 a draft of a press release regarding Snoop cognac ad. Banneker
24 is pleased to announce that Landy cognac, along with
25 spokesperson Snoop Dogg, has featured the Aristocrat in their

D3DLLEV3

Holmes - cross

1 new cognac ad.

2 Do you see that?

3 A. Yes.

4 Q. If you go to the top, you tell Donna on that same day,
5 February 8, 2009, OK, sounds good. Right?

6 A. Yes.

7 Q. And then the press release goes out as Government
8 Exhibit 103-7, if you could publish that.

9 Do you remember the press release now going out
10 February of 2009 regarding Snoop Dogg, Landy cognac, the clock,
11 etc.?

12 A. Like I said, I don't specifically remember, but I'm not
13 disputing it.

14 Q. Do you remember previously, meaning even before the press
15 release went out, sending Donna some photos of Snoop Dogg with
16 the clock, some photos that had been done?

17 A. Ask me that again.

18 MR. SREBNICK: Let me try offering B98 into evidence.

19 No objection? Publish B98.

20 I'll put it up on the Elmo.

21 THE COURT: Why don't you do that.

22 (Defendant's Exhibit B98 received in evidence)

23 Q. Snoop Dogg right here?

24 A. Yes.

25 Q. With the girls?

D3DLLEV3

Holmes - cross

1 A. Yes.

2 Q. Is that the clock back there?

3 A. Yes.

4 Q. OK. Is that a cognac ad for a drink?

5 A. Yes, it was.

6 MR. SREBNICK: I'd like to move into evidence at this
7 time A192. There's no objection, Judge.

8 THE COURT: A192 is in evidence.

9 (Defendant's Exhibit A192 received in evidence)

10 Q. Do you recall from looking at the email, once we publish it
11 for you, that -- from you to Donna, here is the photo shoot
12 Snoop did with our clock in a Landy cognac ad. Hot, huh?
13 Also, Jamie Foxx wants to meet soon, as soon as his baby is
14 born in the next few days, Derrick.

15 Do you remember that?

16 A. It sounds familiar, yeah. I think it was something that I,
17 you know, wrote.

18 Q. Now, speaking of celebrities like Snoop Dogg and Jamie
19 Foxx, do you recall there had been, even before you met the
20 Levys, some publicity that you were able to achieve regarding
21 your company, its association with celebrities?

22 A. I'm sure, yes.

23 MR. SREBNICK: Judge, at this time I'd like to offer
24 without objection composite Exhibit B96. These would be some
25 newspapers, Judge.

D3DLLEV3

Holmes - cross

1 THE COURT: Any objection there?

2 MR. MASTER: No, your Honor.

3 THE COURT: B96 is in evidence.

4 (Defendant's Exhibit B96 received in evidence)

5 MR. SREBNICK: And I'd like to use the Elmo to publish
6 just a few pages and we'll be done with the media.

7 Q. If you could tell the jury, the Denver Urban Spectrum, what
8 publication is that?

9 A. It is a monthly publication, it's in Denver, Colorado, that
10 is tantamount to Ebony or Jet on a smaller scale.

11 Q. Do you recall that in 2007, over several months, the
12 Denver, the Denver Urban Spectrum published several articles
13 featuring you associated with celebrities and your watch
14 company?

15 A. Yes. I know I had been in Urban Spectrum a couple times.
16 I don't remember exactly when or when the dates were, but I
17 know I've been in it.

18 Q. I'm going to publish the article from February 2007. I may
19 be a little clumsy here but I'll get it done.

20 You recognize of course yourself in the picture,
21 right?

22 A. Yeah, I had hair then.

23 Q. OK.

24 THE COURT: Is that a matter of choice, Mr. Holmes.

25 Q. And I think we can see the picture of all the watches that

D3DLLEV3

Holmes - cross

1 were being advertised or at least being featured, I should say,
2 in this article, correct?

3 A. Yes.

4 Q. And the next page there's some mention of the history of
5 Mr. Banneker, and a little bit more about the clock, correct?

6 A. Yes.

7 Q. Do you recall the next month there was an article also
8 featuring yourself, photograph?

9 A. I remember it. I don't remember the time frame, of course,
10 but I do remember the article.

11 Q. Was this consistent with the -- one of the business
12 objectives of Banneker was to introduce graduation type jewelry
13 in the format that you thought would be successful to the
14 urban -- I think we called it the urban youth?

15 A. Yes.

16 Q. Let me show you from December of 2007, do you recall you
17 were featured with Joel Osteen?

18 A. Yes.

19 Q. OK. And then Beyonce?

20 A. Yes.

21 Q. That's you with Beyonce?

22 A. Yes, it is.

23 Q. OK.

24 THE COURT: Next question.

25 MR. SREBNICK: Thank you, Judge.

D3DLLEV3

Holmes - cross

1 Q. And we don't have to read them now, but at least as it was
2 made known to the public, it indicated that you were also
3 associated with other celebrities, including Russell Simmons,
4 correct?

5 A. Yes.

6 MR. SREBNICK: I'd like to move into evidence at this
7 time, I don't know if it was introduced yesterday, Judge, at
8 this time, without objection, I'm going to move in B101.

9 THE COURT: There's no objection, it's received in
10 evidence.

11 (Defendant's Exhibit B101 received in evidence)

12 MR. SREBNICK: I'll just use the Elmo. I thought it
13 was handy.

14 Q. I think you were shown an email yesterday under a different
15 number but it was this one.

16 Do you recall the BannekerInc.@gmail.com was the email
17 address that Donna had registered to receive investor relations
18 issues as you discussed yesterday?

19 A. I was familiarized with it and I did remember it once I saw
20 it. I didn't know exactly what context exactly it was used
21 for, but I remember it.

22 Q. OK. And you see that actually Donna copied you on an
23 email. This one shows -- let's see if I can read this right.
24 Somebody named Tracy is asking -- let's see. Let me read it.
25 One second.

D3DLLEV3

Holmes - cross

1 OK. So this one actually in the correct order.
2 Sometimes they're in reverse order; that's why I got confused.

3 At the top, it's Donna Levy to Tracy W. Dear Tracy, I
4 cannot find the email with your phone numbers. Derrick needs
5 to reach you concerning marketing of the Banneker jewelry.
6 Please send your phone number as soon as you can, and that's
7 your email address, Derrick_Holmes@Yahoo. Best regards, Donna.

8 Correct?

9 A. Yes, I was shown that and it looks.

10 Q. Looked familiar?

11 A. Yes.

12 Q. Do you recall then Tracy sending to Donna with a copy to
13 you all the contact information, Tracy Webb?

14 A. I don't remember it specifically, but it looks right.

15 Q. OK. Good. Do you recall that you mentioned yesterday a
16 person named Bree, Sabrina I think is her name?

17 A. Yes.

18 Q. Do you recall that Sabrina at some point was issued shares
19 in the company, Banneker, that you issued shares to her,
20 correct?

21 A. Yes, I know she was issued some shares.

22 Q. At the same time you issued the shares to her, you issued
23 the shares to Donna Levy, correct?

24 A. Yes. I don't know if it was in the same time, but I know
25 that they both received shares.

D3DLLEV3

Holmes - cross

1 Q. And do you recall that Donna Levy had received a million
2 shares, does that sound right to you?

3 A. It could be. I can't remember exactly what it was to be
4 totally honest.

5 Q. If I show you a document it might refresh your memory,
6 maybe?

7 Let me show you what I'm just going to mark for the
8 time being as A188. Just see if that refreshes your
9 recollection how many shares Donna got and how many shares Bree
10 got.

11 A. It looks familiar.

12 (Continued on next page)

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D3drlev4

Holmes - cross

1 Q. Does that refresh your memory that Donna Levy got a million
2 shares and Bree got a hundred thousand shares?

3 A. Very possible.

4 THE COURT: Do you recall it one way or the other?

5 THE WITNESS: I recall it, yes. I can't remember
6 specifically. But seeing it, that is my signature there, yes,
7 I have to say yes.

8 MR. SREBNICK: Let me offer A188 into evidence at this
9 time.

10 THE COURT: Any objection to 188?

11 MR. MASTER: No, your Honor.

12 THE COURT: It's in evidence.

13 (Defendant's Exhibit A188 received in evidence)

14 MR. SREBNICK: If I could have one moment, Judge, I
15 think I'm almost done. Judge, there is one other exhibit. If
16 I could have a moment, I'll be done. I just have to locate it.

17 THE COURT: Mr. Srebnick, do we need the witness for
18 it?

19 MR. SREBNICK: If I could have a moment, Judge?

20 THE COURT: OK.

21 MR. SREBNICK: Just one other article. I think I'll
22 be able to get a stipulation on it. At this time, Judge,
23 subject to stipulating to another document, I have no further
24 questions of the witness. Thank you, Mr. Homes.

25 THE WITNESS: Thank you.

D3drlev4

Holmes - cross

1 MR. SHARGEL: I want to see if the government has any
2 redirect. I have an application.

3 THE COURT: Do you have any redirect?

4 MR. MASTER: Yes, I do, your Honor.

5 THE COURT: Go ahead.

6 **REDIRECT EXAMINATION**

7 BY MR. MASTER:

8 Q. Mr. Homes, you were shown on cross-examination an exhibit
9 marked as Government Exhibit A175. Do you remember that?

10 A. Yes.

11 Q. I'm sorry. Defense Exhibit A175.

12 MR. MASTER: If I may show this on the ELMO.

13 Q. It is described as executive overview of Banneker?

14 A. Yes.

15 Q. Do you see where it says "Initial investment"? How much
16 money does it say you're seeking as an initial investment for
17 startup costs?

18 A. At the bottom, minimum of 2 million and a maximum of
19 2.5 million.

20 Q. You testified on direct that that's how much you asked
21 David Levy for, right?

22 A. Yes, we had agreed to.

23 Q. How much did David Levy agree to invest in Banneker?

24 A. 2 million.

25 Q. As 2008 progressed, how much of that 2 million was David

D3drlev4

Holmes - redirect

1 Levy delivering to Banneker?

2 A. You mean the totality of the year or are you saying --

3 Q. How much of the 2 million did you end up getting?

4 A. I know it was somewhere in the neighborhood of 700,000, if
5 I recall.

6 Q. As 2008 progressed and you weren't getting the 2 million
7 that he promised you, how did that affect your ability to
8 deliver on that Jostens contract that you had been asked about
9 on cross-examination?

10 A. That first money was invested in the Jostens contract, in
11 the watches, paying back some loans. That affected my ability
12 to get additional watches made and to do things moving forward.

13 Q. Would it be fair to say that it had a bad effect or adverse
14 effect on your ability to deliver the Jostens contract?

15 MR. SHARGEL: Objection to the leading.

16 THE COURT: Overruled.

17 A. I would say to the overall business, yes.

18 Q. That overall business included the Jostens contract?

19 A. Yes.

20 Q. You were asked some questions on cross-examination about
21 your 504s with Mazuma Holdings and David Levy's reactions to
22 those 504s. Do you remember that?

23 A. Yes.

24 Q. You were shown an email that was marked as Defendant's
25 Exhibit A200A, do you remember that?

D3drlev4

Holmes - redirect

1 A. Yes.

2 Q. That's an email from David Levy dated November 28, 2008, do
3 you remember that?

4 A. Yes.

5 MR. MASTER: I would offer Defendants' Exhibit A200A
6 as a government exhibit, as a statement of a party opponent.

7 MR. SHARGEL: I have no objection.

8 THE COURT: 200A is in evidence.

9 (Defendant's Exhibit A200A received in evidence)

10 Q. You stated on cross-examination that you don't specifically
11 remember seeing that, right?

12 A. Correct.

13 Q. What was that?

14 A. I say correct.

15 Q. Was that how David Levy talked to you and referred to you
16 in emails, in this tone?

17 A. Yes, I don't remember that.

18 Q. David Levy states, "This time it was idiotic since you knew
19 better and you also knew that we were getting ready to help
20 you." How many times did David Levy say that he was going to
21 be sending you money and then the money didn't show up?

22 A. It was several times that that happened.

23 Q. When in November 2008 David Levy states "we were getting
24 ready to help you," how confident could you be that he was
25 actually going to deliver the money that he was saying that he

D3drlev4

Holmes - redirect

1 was going to give to you?

2 A. Hopeful but not confident.

3 Q. You were shown some emails on cross-examination about some
4 friendly interactions that you had with Donna Levy in February
5 2009. That's after this email was sent. Do you remember that?
6 Do you remember being asked those questions?

7 A. Yes.

8 Q. After David Levy expressed his disgust, Donna Levy sent you
9 a number of friendly emails, do you remember that?

10 A. A number of?

11 Q. Emails about press releases that she wanted to issue. Do
12 you remember that?

13 A. Yes.

14 Q. By the way, the press release about the Landy Cognac ad,
15 that was dated when? February 2011, right?

16 A. I believe so.

17 Q. Where did the actual Landy Cognac ad come out? You were
18 shown some emails about that, too. It came out several months
19 early, do you remember that?

20 A. I believe so.

21 Q. Did you have any idea why Donna Levy was so interested in
22 issuing press releases on Banneker's behalf in February 2009?

23 A. I guess I could say -- is that a yes-or-no question?

24 Q. Did you know?

25 A. Overall, I've always known that it was to promote the

D3drlev4

Holmes - redirect

1 stock. So to say specifically, I can say no.

2 Q. You were shown a number of emails that came between you and
3 Donna Levy. Do you remember which of those emails you were
4 shown in preparation for your trial testimony?

5 A. I don't necessarily remember, no. I've seen a lot of
6 information.

7 Q. So it's possible that some of those emails you were shown
8 you had not seen before?

9 A. Yes, it's possible.

10 Q. What, if any, knowledge did you have at the time that these
11 emails were being changed that Donna Levy and David Levy were
12 selling hundreds of thousands of dollars of Banneker stock?

13 A. I never really knew in terms of the interaction with stock,
14 their stock, or what.

15 Q. So you had no knowledge that they were selling at that
16 time?

17 A. No.

18 Q. After February 2009, you testified on direct that you got a
19 total of approximately 5,000 more dollars in total from the
20 Levys, do you remember that?

21 A. Yes.

22 Q. Is that an accurate representation of how much money you
23 ended up receiving after February 2009 from the Levys?

24 A. Yes. As I recall, yes.

25 MR. MASTER: Nothing further, your Honor.

D3drlev4

Holmes - redirect

1 MR. SHARGEL: Your Honor, addressed to the redirect
2 examination?

3 THE COURT: Yes.

4 **RECROSS-EXAMINATION**

5 BY MR. SHARGEL:

6 Q. Yesterday, Mr. Holmes, you said that you loved the Levys,
7 right?

8 A. Yes.

9 Q. You still do, correct?

10 A. Yes, I do.

11 Q. You had many social engagements with the Levys, you had
12 meals together over the years, is that a fair statement?

13 A. Yes.

14 Q. But you knew that business was business, right?

15 A. Business is always business.

16 Q. Business is always business. We have seen a number of
17 contracts up there. We have seen memoranda and agreements.
18 Business is business, right?

19 A. Correct.

20 MR. SHARGEL: If we could have this up there again.

21 THE COURT: What's this?

22 MR. SHARGEL: I'm sorry. A200A.

23 THE COURT: Mr. Levy's letter, email?

24 MR. SHARGEL: Yes, email.

25 THE COURT: All right.

D3drlev4

Holmes - recross

1 Q. This was on November 28, 2008. Before we take a look at
2 that, let's go back one more time to a 504 transaction. A 504
3 transaction, the stock is being sold essentially at discount,
4 right?

5 A. Yes.

6 Q. Sometimes as low as half price, right?

7 A. I don't know for sure, but I know generally, from what I
8 remember of 504s, you sell your stock at a discounted price.

9 Q. As we said before, to get quick money, fair statement?

10 A. Yes. To bring investment money into the company, yes, I'd
11 say quickly.

12 MR. SHARGEL: Could we focus on the first half.

13 Q. "I just want to give you a little math to think about."
14 This was written not only to you but to Ron Hunter, your vice
15 president, right?

16 A. You're asking me was Ron Hunter my vice president?

17 Q. He was. You testified to that before, right?

18 A. Correct.

19 Q. William Aul, you knew he was the lawyer, right?

20 A. Yes.

21 Q. This is Mr. Levy writing, because it is from him, "Just
22 want to give you a little math to think about, and why you
23 should all," capital letters, "consider resigning from the
24 board and get some help. Less than a year ago your company was
25 worth about \$175 million. That's 175 million. And today the

D3drlev4

Holmes - recross

1 company is worth 1,200,000 and declining rapidly. So I just
2 wanted to review how you got to such great accomplishment.

3 "You did a 504 funding and got \$60,000, and in turn
4 you lost half of your net worth, not to mention the fact that
5 it cost me \$250,000 to buy it all back. We realized that you
6 were fooled into it due to your lack of experience and spent a
7 considerable amount of time trying to educate and explain to
8 you in details how you got," I'll omit the word, "and in turn
9 your company and all the shareholders, and why you shouldn't
10 have done it and certainly why you should not do it again.

11 "So what do you do? Of course do it again. And if
12 the first time was a mistake, this time it was idiotic, since
13 you knew better, and you also knew that we were getting ready
14 to help you. This time you only received \$4,000, laugh out
15 loud, and caused the stock to go from 70 cents down to 3 cents,
16 a loss of \$27 million, that's 27 million, in your company and
17 shareholder value. Brilliant," in capital letters. "I hope
18 that \$40,000 made a big change in your life. I was going to go
19 on and on and realized that there is no point. You guys are
20 way smarter than me. Good luck."

21 MR. MASTER: Is there a question?

22 MR. SHARGEL: Yes.

23 THE COURT: What is the question?

24 Q. The question is now, sir, after looking at these documents,
25 do you now recall Mr. Levy's position as written in this letter

D3drlev4

Holmes - recross

1 back in November 2008?

2 A. I don't really remember the letter per se, but, like I said
3 to you earlier, I remember having uncomfortable dialogue about
4 the 504s.

5 MR. SHARGEL: I'll stay with "uncomfortable dialogue."
6 Thank you, your Honor.

7 THE COURT: Mr. Srebnick?

8 MR. SREBNICK: I found the document. I think I can
9 stipulate with the government. Another newspaper article. It
10 will be 100. We don't need to publish it now.

11 THE COURT: Also from the Denver spectrum, the urban
12 spectrum?

13 MR. SREBNICK: Yes, from the Urban Spectrum, the
14 online version.

15 Mr. Holmes, you are excused. Thank you very much.

16 (Witness excused)

17 THE COURT: Call your next witness.

18 MS. COHEN: Your Honor, if we could have five minutes?

19 THE COURT: All right. Why don't we take another
20 afternoon break. Mr. Shargel, you had an application?

21 MR. SHARGEL: My application was to admit the exhibit
22 that my adversary was kind enough to admit for me.

23 (Recess)

24 THE COURT: Mr. Master, can you call your next
25 witness, please.

D3drlev4

Lefrancois - direct

1 MR. MASTER: Yes. At this time the government calls
2 Benjamin Lefrancois.

3 BENJAMIN LEFRANCOIS,

4 called as a witness by the government,

5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MASTER:

8 Q. Good afternoon. Where you are you employed, sir?

9 A. Greenway Design Group.

10 Q. What is your position there?

11 A. CEO and president.

12 Q. What does Greenway Design Group do?

13 A. Greenway Design Group is the master company of a product
14 called Cool-n-Save.

15 Q. What is Cool-n-Save?

16 A. Cool-n-Save is a product that helps air conditioning become
17 more efficient, reduces carbon pollution, and helps consumers,
18 residentially and commercially, save money on their bills.

19 Q. I'm going to show you what's been marked for identification
20 as Government Exhibit 400. Do you recognize that?

21 A. Yes.

22 Q. What is Government Exhibit 400?

23 A. This is the residential version of Cool-n-Save.

24 Q. Is that one of the products that you manufacture and
25 market?

D3drlev4

Lefrancois - direct

1 A. Yes.

2 MR. MASTER: Your Honor, the government offers
3 Government Exhibit 400 and requests permission to publish it to
4 the jury.

5 MR. SHARGEL: No objection.

6 THE COURT: 400 is received and it will be shown to
7 the jury.

8 (Government's Exhibit 400 received in evidence)

9 THE COURT: Are you going to take it out of the box?

10 MR. MASTER: I guess it's up to the jury, if they want
11 to publish it that way. Just don't break it.

12 Q. You stated the residential application of Cool-n-Save.
13 What other applications of the Cool-n-Save technology are
14 there?

15 A. We have a commercial version which is designed for larger
16 buildings and multiple units on the top of the building.

17 Q. How does that technology differ from this technology?

18 A. The technology is basically the same other than it's a much
19 bigger system. It's beefier, I would say. We use a reverse
20 osmosis system for the water, three-stage filtration system.
21 It is just designed for a much larger application rather than
22 just a simple residential air conditioning unit.

23 Q. What is reverse osmosis?

24 A. What we do is basically on the larger version we treat the
25 water so that any of the metal on any of the air conditioning

D3drlev4

Lefrancois - direct

1 units can't corrode or rust. Reverse osmosis takes a lot of
2 the minerals out of the water.

3 Q. What, if any, patents do you have on this technology?

4 A. We have the patent on the residential system right now on
5 the paddle that is on top of that box, which opens a pin valve,
6 which allows water to flow to the nozzles. Also it has an
7 inlet that water comes from a hose into that little dome on
8 top, and that is the patent we have on that. We have
9 exclusivity on the chemical that is inside of the filtration
10 system, and we are patent pending on the commercial system
11 right now.

12 Q. Explain briefly for the jury how it actually works to cool
13 and increase energy efficiency.

14 A. Both of them work with the same concept. Basically, we
15 take water. We have a misting system around the air
16 conditioning unit. You can imagine if you were at a restaurant
17 where they have the misters outside. It's a hundred degrees
18 outside, the misters turn on, and it drops the ambient
19 temperature down to a certain degree. We average about 26
20 percent savings on our product.

21 Q. 26 percent savings on what?

22 A. On energy bills, of the AC portion of the merge bill we
23 average about 26 percent savings.

24 Q. How does the chemical that you are describing work to
25 address I guess the corrosion issue that you mentioned.

D3drlev4

Lefrancois - direct

1 A. On the core corrosion system it has at a polymer-based
2 chemical. What it does is distort the calcium molecule so it
3 cannot adhere to metal. So the water will hit metal, and the
4 calcium, instead of sticking to metal, which causes rust and
5 corrosion, falls off.

6 Q. The calcium is in the water that would be reducing the
7 temperature?

8 A. Yes.

9 Q. When did you found Greenway Design?

10 A. 2007.

11 Q. Who did you found it with?

12 A. A few partners of mine, Larry McKenna, Ron Browning, Carlos
13 Ventura were the original partners.

14 Q. What was it originally set up to do?

15 A. Originally, it wasn't just the Cool-n-Save. It was green
16 products, such as synthetic turf to save on water. We had some
17 wood products that were supposed to be a little bit more
18 advanced. But we decided to focus more on the Cool-n-Save.

19 Q. Who actually invented the Cool-n-Save technology?

20 A. The paddle itself was invented by Larry McKenna, an
21 original partner.

22 Q. What is the reason that you switched to focus exclusively
23 on Cool-n-Save?

24 A. We just felt that it had a better market for us. We wanted
25 to focus on one thing rather than trying to be broad. And we

D3drlev4

Lefrancois - direct

1 were really small at that time.

2 Q. How was Greenway Design originally set up? Was it a public
3 or private company?

4 A. Private company, LLC, Texas LLC.

5 Q. Who put in the money to fund the company initially?

6 A. Initially, it was some private investors that I had
7 approached, along with myself getting some lines of credit,
8 bank loans.

9 Q. That's your personal lines of credit?

10 A. Yes.

11 Q. How much money did you put on your personal line of credit
12 to fund the company?

13 A. Lines of credit, there was 150,000. Then the loans I
14 believe were about another 125,000.

15 Q. What is the difference between a line of credit and a loan.

16 A. Investor loans I was speaking of, not loan from a bank.

17 Q. You personally took out how much?

18 A. 150,000.

19 Q. How much did investors loan you or your company?

20 A. 125,000.

21 Q. Did there come a time when some of the original investors,
22 original founders, left and others came in while you were still
23 a private company?

24 A. Yes.

25 Q. Describe the changes in management.

D3drlev4

Lefrancois - direct

1 A. Ron Browning and Carlos Ventura left to do other things,
2 and I brought in Darius Jakubik, Robert Jakubik is his real
3 name, and Scott Christiansen.

4 Q. What is their relationship to you?

5 A. Darius I worked with in the past, and Scott Christiansen is
6 my brother-in-law, who is a dentist, private investor.

7 Q. How much time did you put in, would you estimate, per week
8 in trying to build Greenway Design Group?

9 A. Per week? I would say 60 hours. We were always working.

10 Q. What were you doing during those 60 hours to try to build
11 Greenway Design Group?

12 A. We were doing research and development, trade shows,
13 working on marketing projects, anything we could to get the
14 word out.

15 Q. How much travel did you have to do for Greenway Design
16 Group?

17 A. We did a lot of travel to Las Vegas, to Arizona, some to
18 Texas. Most of the trade shows were in Las Vegas that we
19 attended, though. Then we did some travel to -- not at that
20 time. I think we might have done one trade show in San Diego.

21 Q. Where is this company based?

22 A. Huntington Beach, California.

23 Q. Did there come a time when you began looking for a
24 substantial amount of additional financing?

25 A. Yes.

D3drlev4

Lefrancois - direct

1 Q. What was the reason that you were looking for additional
2 financing?

3 A. In order to get to the next level, we knew we needed to get
4 substantial financing in order to build inventory, do a
5 correct, proper marketing program, branding, and again just
6 hitting the trade shows.

7 Q. How much does it cost to build or to manufacture sufficient
8 inventory of that residential system to distribute it?

9 A. An order of just the filters is about \$30,000. Inventory,
10 depending on how much we would order, probably about a hundred
11 thousand.

12 Q. For how many units?

13 A. That would probably be 5,000, in that range. I don't have
14 it exactly.

15 Q. What does that residential unit retail for?

16 A. 99.99.

17 Q. Did there come a time when you met David Levy and Donna
18 Levy in your effort to find financing for Greenway Design?

19 A. Yes.

20 Q. How did you come to meet them?

21 A. I was working with somebody I knew that was trying to raise
22 funds for us. We had tried several avenues through venture
23 capital, angel investors, and they weren't working out. So we
24 started looking, just reaching out for people to help us raise
25 money. I met with somebody, and that's how it happened.

D3drlev4

Lefrancois - direct

1 Q. Who were the venture capital and angel investors?

2 A. Basically investment groups that are looking to invest in
3 companies.

4 Q. What is the name of the person you started reaching out to
5 see if they could connect you directly with an investor?

6 A. His name was Mark Sinkinson.

7 Q. After you made the introduction with Mark Sinkinson, did
8 there come a time when you received a call from Donna Levy?

9 A. Yes.

10 Q. What did Donna Levy say on the call? What did she say to
11 you and what did you say to her?

12 A. She introduced herself and said she was interested in our
13 company, our product, but was not thrilled with the terms that
14 were being offered. And we decided to move forward from there
15 with different terms.

16 Q. Terms that were being offered by whom?

17 A. I'm sorry?

18 Q. Terms that were being offered by whom?

19 A. Originally, Mark Sinkinson would take a commission or a
20 percentage of any of the amount of money raised, that he
21 raised.

22 Q. How did you know that Donna had some connection to Mark
23 Sinkinson?

24 A. I didn't other than the fact that until she called me and
25 just went over the terms and wasn't thrilled with them.

D3drlev4

Lefrancois - direct

1 Q. How much were you looking for initially?

2 A. Initially, we thought we would need about 300,000.

3 Q. Did there come a time when you actually met with David Levy
4 in connection with your quest for \$300,000 in financing?

5 A. Yes.

6 Q. Who actually appeared at the meeting? Were David Levy and
7 Donna Levy present or just David Levy?

8 A. Just David.

9 Q. Approximately when did this meeting occur?

10 A. I want to say it was within three weeks of the initial
11 conversation, if not a little sooner.

12 Q. I'd like to direct your attention to mid 2009. Did there
13 come a time when you met with David?

14 A. Yes.

15 Q. Where did you meet?

16 A. At my office.

17 Q. Which is where?

18 A. Huntington Beach, California.

19 Q. What did you say to David and what did he say to you at the
20 meeting?

21 A. We just went over what our wants and needs were and what we
22 needed to do to try to get the company to the next level. We
23 discussed the product itself and what we needed to do.

24 Q. What was David's reaction to your description of what your
25 company did and what you needed to do?

D3drlev4

Lefrancois - direct

1 A. He was thrilled. He really thought we had a really good
2 idea and saw the potential in it and was basically on board.

3 Q. How much money did he offer you initially at the first
4 meeting?

5 A. The first meeting I believe was a hundred thousand, and we
6 discussed going up to 300,000.

7 Q. When did he give you that first hundred thousand?

8 A. When we met.

9 Q. The first time he saw you he gave you \$100,000?

10 A. Yes.

11 Q. How did he give it to you?

12 A. By check.

13 Q. Did you retain a copy of that check for your own records?

14 A. Yes.

15 Q. In preparation for your testimony today, did you examine
16 the check, a copy of which you had retained for your records?

17 A. Yes.

18 Q. What is the name of the individual who allegedly signed
19 this check?

20 MR. SHARGEL: Excuse me. I object to the form of the
21 question, "allegedly."

22 THE COURT: Sustained.

23 MR. MASTER: Yes, your Honor. Withdrawn.

24 Q. I'd like to show you what's been marked for identification
25 as Government Exhibit 400-8. Do you recognize that document?

D3drlev4

Lefrancois - direct

1 A. Yes.

2 Q. What is it?

3 A. It's a general security agreement signed by myself and
4 David, and then it's a promissory note.

5 Q. Is there something attached to the back?

6 A. Yes, there is a check.

7 Q. Is that the first check that you just described receiving
8 from David?

9 A. Yes.

10 Q. How do you recognize it? From your own signature and that
11 of David's?

12 A. Yes. Well, the one isn't signed, but the one is by both of
13 us.

14 Q. You recognize the document from your dealings?

15 A. Yes.

16 MR. MASTER: The government offers Government Exhibit
17 400-8.

18 MR. SHARGEL: May I see the check? I have no
19 objection.

20 THE COURT: 400-8 is received in evidence.

21 (Government's Exhibit 400-8 received in evidence)

22 MR. MASTER: If you could publish the last page of
23 that, Mr. Dinet.

24 Q. There is a signature on that check that you remember
25 receiving. Do you recognize that signature?

D3drlev4

Lefrancois - direct

1 A. No, I don't.

2 Q. Have you ever met anyone named Yael Tal?

3 A. No, I haven't.

4 Q. Do you know an individual named Yael Tal's relationship to
5 David Levy?

6 A. No, I don't.

7 Q. Did David Levy ever describe being in business with his
8 sister?

9 A. No.

10 Q. Who did you understand EZ English to be owned by?

11 A. David Levy.

12 Q. In fact, David Levy entered into this -- well, withdrawn.
13 What, if any, other companies did you know David Levy to be
14 controlling?

15 A. The only other one I thought was Date Palm Capital.

16 Q. In fact, even though this first check was written on the
17 bank account of EZ English, if you look at the first page of
18 Government Exhibit 400-A -- Mr. Dinet, if you could turn to the
19 first page. Who is this general security agreement between?

20 A. Greenway Design Group and Date Palm Capital.

21 Q. Again, who did you know to be the person running Date Palm
22 Capital?

23 A. David Levy.

24 Q. What did you understand the purpose of this general
25 security agreement to be?

D3drlev4

Lefrancois - direct

1 A. Just as it says. Basically, a general security agreement,
2 the terms we had talked about, coming in with a hundred
3 thousand and then looking to get up to 300,000 if needed.

4 Q. The reference to the initial hundred thousand and the up to
5 300,000, that's in paragraph A there under the "Whereas"?

6 A. Correct.

7 Q. "Secured party agreed to transfer to debtor," and that's
8 you, the Greenway Design Group, correct?

9 A. Correct.

10 Q. "The sum of \$100,000 to debtor in exchange for debtor's
11 issuance of the secured note." Then it references a principal
12 amount of \$100,000 and it may be increased to an aggregate of
13 \$300,000. Do you see that?

14 A. Yes.

15 Q. By the way, that last page, the copy of the check, you
16 recognize that check as the check that you received from David
17 Levy at that first meeting you had with him?

18 A. Yes.

19 Q. Now back to the general security agreement. You stated
20 that you entered into this for an initial amount of 100,000 up
21 to a maximum of 300,000. When was this agreement actually
22 drafted up? In other words, had it been drafted before your
23 meeting where he gave you the check?

24 A. No, I believe it was drafted right after.

25 Q. Who drafted this agreement?

D3drlev4

Lefrancois - direct

1 A. Bill Aul.

2 Q. Who is Bill Aul?

3 A. Bill Aul was our attorney.

4 Q. That's A-U-L, right?

5 A. Yes.

6 Q. Bill A-U-L?

7 A. Yes, correct.

8 Q. How did you find Bill Aul?

9 A. David Levy helped us.

10 Q. In connection with the general security agreement, you
11 referenced there is a second agreement that you agreed to enter
12 into. Withdrawn. Following this agreement, did you have
13 subsequent conversations with David Levy about some plans that
14 David Levy suggested you pursue for your business?

15 A. Our agreement originally was to get some money to put into
16 the company for what I have already talked about, inventory,
17 etc. Then the plan turned to going to public entities so we
18 could raise significantly more money.

19 Q. Whose idea was it to take your company public so that you
20 could raise significantly more money?

21 A. David Levy.

22 Q. When, if ever, had you managed a public company before?

23 A. I hadn't.

24 Q. What was your background before founding Greenway Design
25 Group?

D3drlev4

Lefrancois - direct

1 A. Mortgage broker, did some home building.

2 Q. When, if ever, had you taken a company public before?

3 A. I hadn't.

4 Q. What did David Levy say he would do to help take your
5 company public?

6 A. He would help with everything. He will help guide us
7 through it, get us going, get us the company that we needed to
8 merge with, legal expenses. Everything.

9 Q. What did he say he would be able to do once he took the
10 company public?

11 A. Raise money. That was the whole idea, to be able to raise
12 a significant amount of money so that we could basically go to
13 the next level.

14 (Continued on next page)

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D3DLLEV5

Lefrancois - direct

1 BY MR. MASTER:

2 Q. Now, at the time that you entered into these discussions
3 with David Levy, was there an ownership structure for the LLC,
4 in other words, did different people own different percentages
5 of the LLC?

6 A. Yes.

7 Q. And by LLC, I should step back. What was the corporate
8 structure for Greenway Design, the private company?

9 A. The percentages, is that what you're asking me?

10 Q. Well, I stated Greenway Design LLC, and I hadn't asked you
11 before what is an LLC?

12 A. Limited liability company.

13 Q. OK. Is that a type of private company?

14 A. Yes.

15 Q. And so what was the ownership structure of this private
16 company that you owned?

17 A. The ownership structure was I owned 60 percent, Darius
18 Jakubik owned 20 percent, Larry McKenna owned 10 percent, Scott
19 Christiansen owned 10 percent.

20 Q. And did there come a time when you entered into more
21 serious discussions with David Levy about taking the company
22 public?

23 A. More serious discussions, I mean we had a plan and that was
24 the basic was to take it public and go from there.

25 Q. Now, in fact, you went forward with the plan?

D3DLLEV5

Lefrancois - direct

1 A. Correct.

2 Q. Now, who drafted the documents that were needed to take
3 your company public?

4 A. Bill Aul.

5 Q. And who found the shell company that you used to merge
6 into?

7 A. David Levy and Bill Aul.

8 Q. And what was the name of that shell company?

9 A. Voice Networks.

10 Q. And what was your understanding of the company that I guess
11 what Voice Networks was?

12 A. My understanding, they had something to do with sprinklers.

13 Q. And what was the status of the company as of the time of
14 the merger?

15 A. Which company, mine or theirs?

16 Q. Voice Networks.

17 A. I'm not aware, I don't know.

18 Q. And did there come a time when the merger was completed?

19 A. Yes.

20 Q. At the time that you were negotiating this merger, what if
21 anything did David Levy say about the relationships he had in
22 Panama?

23 A. I didn't know anything about that.

24 Q. Well, at the time of the merger, what if anything did David
25 Levy say about an investor group that he had in Panama?

D3DLLEV5

Lefrancois - direct

1 A. Well, when we were talking about trying to raise money, one
2 of the ideas he had had was a group that he thought he might be
3 able to get in Panama for us.

4 Q. To do what?

5 A. To raise money either through grants or bonds or loans. We
6 didn't ever get to that point.

7 Q. And as David was funding the company, what if anything did
8 David say to you about the source of some of the funds he was
9 investing in the company?

10 A. He didn't.

11 Q. What if any connection to Panama did he say there was
12 between, well, with respect to the funds he was investing?

13 A. My only understanding that he had banking relationships in
14 Panama, and I didn't really ask much more than that. I just
15 knew that he dealt with some people in Panama because some of
16 the wires we would receive went from Panama to Bank of America
17 to us. So that's all I know.

18 Q. Now, at the time you merged, how many shares were issued in
19 the name of Greenway Design Group, the public company?

20 A. For Greenway, it was a hundred million.

21 Q. And how many shares did you get in that company?

22 A. 60 million.

23 Q. And how about the other insiders or the other founders?

24 A. It was broken up to the percentages. So Darius got
25 20 million, Scott Christiansen got 10 million, and Larry

D3DLLEV5

Lefrancois - direct

1 McKenna got 10 million.

2 Q. And approximately when did the merger occur?

3 A. 2009, I believe it was September of 2009.

4 Q. At around the time of the merger, did there come a time
5 when you learned that in addition to the hundred million shares
6 that were issued in your name and the names of these other
7 insiders that you learned that an entity named Bluefin
8 Financial Group --

9 A. Yes.

10 Q. -- had acquired an interest in Greenway Design?

11 A. Yes.

12 Q. I'm going to show you what's already been introduced into
13 evidence as Government Exhibit 450-2.

14 MR. MASTER: And if you wouldn't mind publishing that,
15 Mr. Dinet.

16 Q. And what is Government Exhibit 450-2?

17 A. This is a shareholder list.

18 Q. Of which company, of your company?

19 A. Yes.

20 Q. As of what date? There's a date printed on --

21 A. This is of November 15, 2010.

22 Q. And is that a shareholder list that's maintained by your
23 transfer agent?

24 A. Yes.

25 Q. And what's a transfer agent?

D3DLLEV5

Lefrancois - direct

1 A. He deals with all of our shares, full standing or
2 outstanding.

3 Q. Just handing you a copy of Government Exhibit 450-2. I'd
4 like you to turn to the last page of that document.

5 MR. MASTER: And, Mr. Dinet, if you wouldn't mind
6 turning to the last page.

7 Q. What's the name of the entity that's listed on the last
8 page of that document?

9 A. Bluefin Financial Group.

10 Q. And what's the address that's listed as being associated
11 with Bluefin Financial Group?

12 A. 3100 North 29th Court, Second Floor, Hollywood, Florida
13 33020.

14 Q. And how many shares were issued in the name of Bluefin
15 Financial Group?

16 A. 9,900,000.

17 Q. And do you know how Bluefin Financial Group came to gain a
18 9,900,000 share interest in Greenway Design Group?

19 A. No, I don't.

20 Q. And who did you know, who did you understand to be
21 associated with Bluefin Financial Group?

22 A. David Levy.

23 Q. And how did you come to learn that?

24 A. There was incident where his brief case was stolen and we
25 had to change the stock certificates. We had to delete -- I

D3DLLEV5

Lefrancois - direct

1 don't know what you say -- we had to get so no one else could
2 use them.

3 Q. Well --

4 A. And reissue.

5 Q. Who told you, first of all, who told you that the brief
6 case was stolen?

7 A. David Levy.

8 Q. And whose brief case did David Levy say had been stolen?

9 A. His.

10 Q. And when did David Levy tell you that his brief case was
11 stolen?

12 A. Just prior to when we had to reissue the stocks.

13 Q. And prior to that, what knowledge if any did you have that
14 David Levy owned 9,900,000 shares in Greenway Design Group
15 through Bluefin Financial Group?

16 A. I didn't.

17 Q. And what if any contract or promissory note did Greenway
18 Design Group have with Bluefin Financial?

19 A. We didn't.

20 Q. Now, with respect to the Bluefin Financial, what if any
21 connection were you aware of that Bluefin Financial had to
22 Panama?

23 A. I didn't.

24 Q. What if anything did David Levy say about relationships
25 that he had in Panama in connection with Bluefin Financial?

D3DLLEV5

Lefrancois - direct

1 A. I have no knowledge of that.

2 Q. He never said anything about that?

3 A. No.

4 Q. And what happened -- who was your transfer agent when David
5 Levy reported to you that his shares in Bluefin Financial were
6 stolen?

7 A. Pacific Stock Transfer.

8 Q. And what was Pacific Stock Transfer's reaction when David
9 Levy tried to get the Bluefin Financial shares reissued to him?

10 MR. SHARGEL: Objection, hearsay.

11 THE COURT: Overruled.

12 A. They wouldn't reissue them.

13 Q. And so what did David Levy ask you to do when Pacific Stock
14 Transfer refused to reissue the shares to David Levy in the
15 name of Bluefin Financial?

16 A. We changed to West Coast Stock Transfer.

17 Q. At whose request?

18 A. David Levy and Bill Aul.

19 Q. And what was your understanding of the reason why you
20 switched to West Coast Stock Transfer?

21 A. At that time I didn't really understand why, but we just --
22 I was doing what I was told to do. And they were -- I was told
23 that West Coast would be easier to work with, they're closer to
24 Bill and they're in San Diego, where he was.

25 Q. And that followed Pacific Stock Transfer's refusal to

D3DLLEV5

Lefrancois - direct

1 reissue the Bluefin Financial shares to David Levy?

2 A. Correct.

3 Q. Approximately when did David Levy report that his shares in
4 Bluefin Financial had been stolen from a brief case?

5 A. I don't know the exact date of that. I mean it was prior
6 to him having to or us changing transfer agents.

7 Q. Who told you to change transfer agents?

8 A. David Levy.

9 Q. I'd like to show you what's been marked for identification
10 as Government Exhibit 450 -- it's actually in evidence as
11 Government Exhibit 450-16, and it's from you to an individual
12 named -- it's an email dated December 1, 2010, from you to an
13 individual named Frank Brickell.

14 A. Correct.

15 Q. Who is Frank Brickell?

16 A. He was the transfer agent for West Coast Stock Transfer.

17 Q. And did this email exchange occur soon after you switched
18 from Pacific Stock Transfer to West Coast Stock Transfer?

19 A. Yes.

20 Q. And what does this email relate to?

21 A. Seeing if the new certificates were issued.

22 Q. New certificates in the name of what entity?

23 A. I believe Bluefin Financial. That's what I'm writing,
24 that's what it says on here.

25 Q. And do you recall asking if West Coast Stock Transfer would

D3DLLEV5

Lefrancois - direct

1 reissue the shares in the name of Bluefin Financial to David
2 Levy?

3 A. I didn't ask. They just did it.

4 Q. Well, what were you doing when you were -- what was the
5 reason you were writing to West Coast Stock Transfer about the
6 Bluefin Financial shares?

7 A. I was seeing if the lost certificates were transferred over
8 and if they were ready to go, so it looks like to be traded.

9 Q. What was your understanding of the reason why David Levy
10 wanted to get those shares reissued to him?

11 A. To start trading and get the stock public, get it going.

12 Q. What kind of shares did you get in Greenway Design Group
13 when it merged in September 2009?

14 A. Restricted shares.

15 Q. And how about the other founders of the company, what kind
16 of shares did you get?

17 A. We all got restricted shares.

18 Q. And as of 2009, what if any understanding did you have that
19 David Levy had his own shares in Greenway Design?

20 A. I wasn't aware at the beginning.

21 Q. And it was -- when did you learn that he had shares in
22 Greenway Design Group?

23 A. Well, just when we went over the strategy of how we were
24 going to go public and get everything going. At that time I
25 didn't know much about it.

D3DLLEV5

Lefrancois - direct

1 Q. And when did he tell you that he had already had shares
2 issued to him in the name of Bluefin Financial?

3 A. I don't recall that conversation, actually.

4 Q. OK. But you do recall the discussion about the lost brief
5 case?

6 A. Yes.

7 Q. And I'd like you to take a brief look at Government
8 Exhibit 450-15. Do you recognize Government Exhibit 450-15?
9 And, actually, if you could just start at the bottom,
10 Mr. Dinet. It's an email, starts with an email dated
11 December 7, 2010, at 2:07 p.m.

12 Ben/Bill, do either of you have the contact
13 information for Bluefin Financial Group? We have not received
14 the lost certificate docs yet. I wanted to follow up just to
15 make sure everything is all right. It's from Frank Brickell.

16 What was your understanding of the lost certificate
17 documents that he was remembering to?

18 A. My understanding was the ones that David was referring to
19 in his brief case.

20 Q. By the way, when if ever were you presented with a police
21 report or other document indicating that he actually had a
22 brief case stolen?

23 A. I didn't.

24 Q. And then what's the top email? It's from later that day.

25 MR. MASTER: Mr. Dinet, if you go up to the top.

D3DLLEV5

Lefrancois - direct

1 Q. It states, I just forwarded this to David Levy, his number,
2 and then it lists a phone number, and it's from you to Frank
3 Brickell, copy to William Aul.

4 Why did you forward that email to David Levy?

5 A. No, I forwarded that -- oh. Frank was asking for Bluefin
6 Financial's number. That's the only one that I knew had
7 anything to do with it, with Bluefin.

8 Q. And did there come a time later when David Levy reported
9 some control changes with Bluefin Financial?

10 A. No.

11 Q. I'd like you to take a look at Government Exhibit 450-14.
12 And if you wouldn't mind looking at the bottom email dated
13 March 10, 2011, it states, he mentioned the shareholder will
14 need to fill them out. I forwarded these documents a while ago
15 to David Levy. He mentioned there was some control changes
16 with Bluefin Financial. Are they requesting replacement
17 certificates.

18 And what did you reply? If you could go to the top.
19 It states, no, they wish to cancel them. Can you please email
20 me the documents that need filling out so I can get them to
21 Bluefin.

22 Who told you that there was an interest in canceling
23 shares in Bluefin?

24 A. David Levy.

25 MR. MASTER: Now, if you wouldn't mind taking that

D3DLLEV5

Lefrancois - direct

1 off.

2 Q. Now, in between the June meeting in 2009 and 2011, David
3 Levy, well, about how much in financing did David Levy provide
4 to Greenway Design?

5 A. At that time it would have had to have been close to
6 \$2 million.

7 Q. And in what form did the financing take?

8 A. They were all notes.

9 Q. What do you mean by notes?

10 A. Well, they're secure promissory notes.

11 Q. And can you just explain to the jury what a secure
12 promissory note is?

13 A. It was basically a loan with interest or right to convert
14 into stock at a certain price.

15 Q. Is that also known as a convertible note?

16 A. Yes.

17 Q. Who drafted all the convertible notes that you entered into
18 with David Levy?

19 A. Bill Aul.

20 Q. And was all the financing incorporated into a single note
21 or were there several notes?

22 A. Several notes.

23 Q. And how would it come about that you would get multiple
24 notes between yourself and entities controlled by David Levy?

25 A. Well, we were just we kept needing money. We kept trying

D3DLLEV5

Lefrancois - direct

1 to build the business. We kept trying to get big deals closed
2 that weren't closing. So, we kept borrowing.

3 Q. And you stated borrowing. What if any I guess equity
4 position did David Levy take in Greenway Design Group, the
5 publicly traded corporation, other than the position in Bluefin
6 Financial that you later learned about?

7 A. He didn't have an equity position.

8 Q. And by equity position, what's your understanding of that
9 term?

10 A. Ownership or percentage of ownership.

11 Q. I'd like to show you what's been marked for identification
12 as Government Exhibits 400-5, 400-6, 400-7, 400-14, 400-11,
13 400-12, 400-13, 400-18, 400-15, 400-16, and 400-17. And I
14 apologize for jumping around in the numbers but that's in
15 chronological order.

16 Do you recognize each of those documents?

17 A. Yes.

18 Q. Just take a moment to flip through them. Do you recognize
19 each of those documents?

20 A. Yes.

21 Q. OK. What are they?

22 A. They are general security notes. They are board -- actions
23 of the manager without a board meeting consent, approved the
24 notes.

25 Q. And so each of those is one of these convertible notes?

D3DLLEV5

Lefrancois - direct

1 A. Correct.

2 Q. And those are notes that were authorized by the board of
3 directors of Greenway, right?

4 A. Yes.

5 Q. Does your signature appear on each of those documents?

6 A. Yes.

7 MR. MASTER: At this time the government offers
8 Government Exhibits 400-5, 400-6, 400-7, 400-14, 400-11,
9 400-12, 400-13, 400-18, 400-15, 400-16, and 400-17 into
10 evidence.

11 MR. SHARGEL: Without objection.

12 THE COURT: They're received in evidence.

13 (Government's Exhibits 400-5, 400-6, 400-7, 400-14,
14 400-11, 400-12, 400-13, 400-18, 400-15, 400-16, and 400-17
15 received in evidence)

16 MR. MASTER: So if you could just quickly publish the
17 front pages of each of those notes, Mr. Dinot, if you could
18 just publish the front page of 400-5.

19 Q. And when was this note entered into? This is a note dated
20 September 21, 2009.

21 When was this note entered into in relation to your
22 going public, approximately?

23 A. A couple months.

24 Q. It states the manager of this company acknowledges that the
25 company has completed a merger with Voice Networks.

D3DLLEV5

Lefrancois - direct

1 A. Correct. I'm sorry, I thought you meant when we started
2 trading. Yes, it was right after.

3 Q. And what's the amount of the note?

4 A. 100,000.

5 Q. And who issued the note to you? Your company is the
6 debtor, correct?

7 A. This the first one?

8 Q. And it states the parent company and this company have a
9 preexisting business relationship with the principals EZ
10 English. Do you recall?

11 A. Yes.

12 Q. And, again, who did you understand to control EZ English?

13 A. David Levy.

14 Q. Now, if you could turn to Government Exhibit 400-6, first
15 page, and what's the date of that note and how much is it for?

16 A. November 2, 2009, for another hundred thousand.

17 Q. And who's the lender?

18 A. EZ English.

19 Q. And who actually gave you the money for this note?

20 A. You mean what account did it come from?

21 Q. Well, not what account, but which individual?

22 A. David Levy.

23 Q. And now 400-7, and what's the date of that note and how
24 much is that for?

25 A. This is for 50,000, December 15.

D3DLLEV5

Lefrancois - direct

1 Q. And who is it with?

2 A. EZ English.

3 Q. And, again, who gave you that money?

4 A. David Levy.

5 Q. And by the way, as you're going through these, do you know
6 what was the conversion rate for the note, was it at the actual
7 stock price or was there a discount to the stock price that you
8 agreed to accept?

9 A. At this time we didn't have a stock price. There was
10 actual price on here.

11 Q. It states on page 1, two, three, four of the document and,
12 Mr. Dinet, if you wouldn't mind turning to page 4, it states
13 there's a --

14 A. Hold on.

15 Q. Do you see Section 1.4 on payments? I'm sorry.

16 A. This one wasn't stapled.

17 THE COURT: Both people are talking at the same time
18 now. Do you want to direct the witness to a particular spot?

19 MR. MASTER: I was directing to page 4 of the document
20 which states under, well, one moment. We're just going to put
21 it up on the Elmo to avoid any confusion.

22 Q. Under Section 1.4, right of conversion, do see that on the
23 screen?

24 A. Yeah, but I have it on page 2.

25 Q. OK. My apologies. It states right of conversion.

D3DLLEV5

Lefrancois - direct

1 A. 10 cents per share.

2 Q. And is that -- that's the rate at which, the price per
3 share at which the debt would be converted into shares?

4 A. Correct.

5 Q. And did you also agree to pay interest on those, on the
6 money that was paid to you by David Levy?

7 A. Yes.

8 Q. Now, if you could just turn to Government Exhibit 400-14,
9 Mr. Dinet. That's another \$50,000. Just to help us get
10 through, it's another \$50,000, dated January 5, 2010, and in
11 the name of EZ English, correct?

12 A. Yes.

13 Q. And then 400-11 is another \$50,000, January 29, 2010, and
14 that's in the name of EZ English as well, correct?

15 A. Yes.

16 Q. And then 400-12, that's not with EZ English, correct?

17 What is the name of the entity that was used to issue
18 that note?

19 A. Date Palm Capital.

20 Q. And who controlled Date Palm Capital?

21 A. David Levy.

22 Q. And what's the amount of that note?

23 A. 300,000.

24 Q. And that's dated March 1, 2010?

25 A. Yes.

D3DLLEV5

Lefrancois - direct

1 Q. And 400-13, that's another note issued by EZ English for
2 \$50,000 dated May 25, 2010?

3 A. Yes.

4 Q. Do you remember that?

5 A. Yes.

6 Q. 400-18 is another 50,000 dated June 22, 2010; do you
7 remember that one?

8 A. Yes.

9 Q. That's with EZ English.

10 Government Exhibit 400-15, that's another 25,000 dated
11 July 23, 2010, that's with EZ English, as well, correct?

12 A. Yes.

13 Q. And 400-16 is another 25,000 dated August 26, 2010, with EZ
14 English?

15 A. Yes.

16 Q. And Government Exhibit 400-17, that's another \$31,470,
17 that's dated October 19, 2010?

18 A. Yes.

19 Q. That's with EZ English as well, right?

20 A. Yes.

21 Q. What did you spend all this money on?

22 A. Research and development, inventory, packaging, marketing.

23 Q. And how much -- how many employees did you have?

24 A. Five.

25 Q. And how about costs of getting patents issued to you, how

D3DLLEV5

Lefrancois - direct

1 expensive is that?

2 A. The residential patent was approximately 25,000.

3 Q. And how about the application for the commercial patent?

4 A. Right now about 12,000.

5 Q. OK. And how about costs of your building and physical
6 plant?

7 A. The building, with everything, that was about 12,000 a
8 month.

9 Q. And at this time did you have an accountant?

10 A. No. We had, well, we had accountant that did our quarterly
11 reports.

12 Q. And you reported all your expenses and your income --

13 A. Yes.

14 Q. -- to your accountant?

15 A. Yes.

16 Q. When if ever did your accountant refuse to sign off on your
17 quarterly report because of any irregularity in how you spent
18 this money?

19 A. No.

20 Q. And all this money was spent trying to build -- was any of
21 this money spent on improper personal expenses?

22 A. No.

23 Q. And as you were spending this money on building the
24 business, how often did you keep David Levy updated on what you
25 were doing?

D3DLLEV5

Lefrancois - direct

1 A. Very often, monthly, weekly.

2 Q. Now, as the end of 2010 approached, what if anything had
3 David Levy done to exercise any of those notes?

4 A. Nothing, he hadn't.

5 Q. Now, did there come a time when David Levy told you that he
6 wanted to exercise one of the notes?

7 A. Yes.

8 Q. And what did he ask you to do to authorize the conversion
9 of one of these notes to stock?

10 MR. SHARGEL: May we fix a time?

11 THE COURT: Can we have a time, please.

12 MR. MASTER: Yes.

13 Q. I'd like to direct your attention to December 2010. Do you
14 recall being asked by David Levy at that time or informed by
15 David Levy at that time that he wished to exercise one of those
16 notes?

17 A. Yes.

18 Q. I'd like you to take a look at what's already in evidence
19 as Government Exhibit 450-12.

20 MR. MASTER: If you wouldn't mind, Mr. Dinot, just
21 pulling that up.

22 Q. It's dated December 22, 2010. Hi, Frank. It states: Hi,
23 Frank. Here is the filled out form. If at all possible,
24 please have the issued stock FedExed overnight to EZ English.
25 The account number is on the form.

D3DLLEV5

Lefrancois - direct

1 And if you, first of all, who wrote that email?

2 A. I did.

3 Q. And if you wouldn't mind turning to the third page of that
4 document, Mr. Dinet, and it's something called an issuance
5 resolution.

6 Do you recall seeing that before?

7 A. Yes.

8 Q. And what does that issuance resolution relate to?

9 A. We did a debt conversion on one of the notes.

10 Q. And it states certificate mailing instructions at the
11 bottom, contact name, and what's the contact name listed?

12 A. David Levy.

13 Q. And related to what entity?

14 A. EZ English.

15 Q. Is that the person who told you that he wanted to exercise
16 or convert one of the notes?

17 A. Yes.

18 Q. From a debt to stock?

19 A. Yes.

20 Q. And how many shares did he get as a result of the
21 conversion?

22 A. 10 million.

23 Q. And what kind of shares did he say that he wanted to get as
24 a result of the conversion?

25 A. Free trading shares.

D3DLLEV5

Lefrancois - direct

1 Q. And what it states, if exempt from registration, please
2 detail the reason and will provide for the exemption from
3 registration thereby allowing shares to be issued without any
4 restrictive legend.

5 And then there's some writing, "pursuant to legal
6 opinion," whose handwriting is that?

7 A. Mine.

8 Q. And what legal opinion were you referring to?

9 A. Bill Aul's.

10 Q. And what did Bill Aul determine in his legal opinion
11 concerning the conversion of the note from debt to stock?

12 A. I'm not a hundred percent sure.

13 Q. Well, based on this, do you recall that you received a
14 legal opinion letter that authorized you to issue 10 million
15 shares to EZ English in -- without restrictive legend, that is,
16 free trading shares?

17 A. Yes.

18 Q. Is that what the purpose was of this document?

19 A. Yes.

20 Q. And then there's an address associated with EZ English,
21 3109 Northeast 23rd Court, Fort Lauderdale, Florida, and then
22 there's a zip code.

23 Do you recall knowing anything about that address?

24 A. No.

25 Q. Who supplied that address to you?

D3DLLEV5

Lefrancois - direct

1 A. David Levy.

2 Q. What's the date of the issuance of this issuance
3 resolution?

4 A. December 22, 2010.

5 Q. And as of this date, what if any trading of Greenway Design
6 Group was occurring on the public markets?

7 A. I don't believe we were traded at all.

8 Q. And on what exchange you were listed?

9 A. OTC markets or Pink Sheets.

10 Q. And how did, who made the arrangements for you to be traded
11 on OTC markets or Pink Sheets?

12 A. David Levy and Bill Aul.

13 Q. Now, I'd like to ask you what awareness if any do you have
14 with something known as the 5 percent or 10 percent rule?

15 A. I know now, I didn't know then. So do you want me to tell
16 you?

17 Q. Yes. Based on your experience.

18 MR. SHARGEL: Judge, I object to this.

19 THE COURT: Overruled.

20 What's your understanding of the five or 10 percent
21 rule?

22 THE WITNESS: My understanding is that an individual
23 can't sell more than 5 percent of the stock at any time.

24 Q. Well, you were the CEO of Greenway Design Group, right?

25 A. Yes.

D3DLLEV5

Lefrancois - direct

1 Q. And that made you an insider, correct?

2 A. Yes.

3 Q. And what if any restrictions were there on you selling
4 shares, even if you had unrestricted shares?

5 A. I could sell 1 percent every 90 days.

6 Q. 1 percent of what?

7 A. Of the outstanding shares.

8 Q. And was that true whether or not you held restricted
9 shares?

10 A. No, that's only if they were unrestricted.

11 Q. And as a result of David Levy's holding of 9,900,000 shares
12 in Bluefin and 10 million shares in EZ English, what was his
13 percentage ownership of Greenway Design Group's stock after the
14 issuance of this note?

15 A. I don't have that figure in front of me.

16 Q. How many other shares were there aside from the 19,900,000
17 shares that were then held by David Levy?

18 A. Just whatever was on Voice Networks that came over. That
19 was it. We didn't have any.

20 Q. Well, how many restricted shares did you and your partners
21 have?

22 A. A hundred million.

23 Q. Now, what did David Levy do with his single certificate for
24 10 million EZ English shares after the issuance of this
25 resolution, do you know?

D3DLLEV5

Lefrancois - direct

1 A. No.

2 Q. I'm going to show you what's been marked, actually,
3 introduced as Government Exhibit 450-8. And I'm going to show
4 you, this is document issued by West Coast Stock Transfer.

5 And what's West Coast Stock Transfer again?

6 A. Our transfer agent, transfers the stock certificates.

7 Q. And I'd like you to just turn, Mr. Dinet, if you go to the
8 first page of that or second page, and it's a FedEx from David
9 Levy to Frank with EZ English to Frank Brickell. And if you
10 could just turn to the next page. It's a document in the name
11 of EZ English to Frank Brickell signed by David Levy.

12 Have you seen that document before your preparation to
13 testify today?

14 A. Yes.

15 Q. It states, Please exchange certificate of 10 million shares
16 into ten certificates of 1 million each.

17 What if any knowledge do you have that David Levy had
18 broken up the 10 million shares into ten certificates of
19 1 million each?

20 A. I didn't have any knowledge.

21 Q. And what if any discussions did you have with David Levy
22 about the purpose of this breaking up the shares in this way?

23 A. I didn't.

24 Q. And now I'm going to show you what's been introduced as
25 Government Exhibit 450-5. That's another document in the name

D3DLLEV5

Lefrancois - direct

1 of West Coast Stock Transfer and -- Mr. Dinet -- it relates to
2 3 million shares.

3 MR. MASTER: Mr. Dinet, if you could turn to the
4 seventh page in that document.

5 Q. It relates to EZ English Inc., and it relates to the
6 issuance of shares and deposit of shares by an individual named
7 Yael Tal.

8 What if any knowledge do you have that an individual
9 named Yael Tal was holding shares of Greenway Design Group in
10 the name of EZ English?

11 A. I had no knowledge.

12 Q. And then I'm going to show you another document that's
13 marked as Government Exhibit 400-23 -- withdrawn. Sorry. I
14 had the wrong exhibit.

15 Government Exhibit 400-23. Do you recognize that
16 document, Mr. Lafrancois, do you recognize that?

17 A. Yes.

18 Q. What is it?

19 A. It's confirmation that EZ English sold 5 million shares to
20 Fitzwilliam Investments. It's on the way to the transfer
21 agent.

22 Q. Is that an email that you exchanged with David Levy?

23 A. This is from David Levy to Bill Aul with CC to myself.

24 MR. MASTER: Government offers Government
25 Exhibit 400-23.

D3DLLEV5

Lefrancois - direct

1 MR. SHARGEL: No objection.

2 THE COURT: 400-23 is received in evidence.

3 (Government's Exhibit 400-23 received in evidence)

4 MR. MASTER: Mr. Dinet, if you can publish that,
5 please.

6 Q. And if you wouldn't mind, it states David Levy and his
7 email address, David@DatePalmCapital.com?

8 A. Yes.

9 Q. Right. And this is David Levy writing: Good morning,
10 gents. Please be aware that EZ English Inc. sold 5 million
11 shares to Fitzwilliam Investments Inc. The certs are on their
12 way to the transfer agent to change ownership.

13 Do you remember receiving that email?

14 A. Yes.

15 Q. And what if any connection were you aware of between David
16 Levy and Fitzwilliam Investments?

17 A. I wasn't, no connection.

18 Q. When did David Levy, when if ever did David Levy say that
19 he also owned Fitzwilliam Investments?

20 A. He didn't.

21 Q. What was your understanding of the purpose of this
22 transfer, the alleged sale -- withdrawn.

23 What was your understanding of the purpose of this
24 communication?

25 MR. SHARGEL: Foundation.

D3DLLEV5

Lefrancois - direct

1 THE COURT: Overruled.

2 A. I had no understanding and I didn't know why or what was
3 going on at this time.

4 Q. Let's get back to what happened after David Levy had the
5 10 million shares issued to EZ English.

6 How soon after the December 22, 2010 issuance did the
7 shares begin to trade on public markets?

8 A. Soon after.

9 Q. And I'd like to now direct your attention to January 2011.
10 Actually, withdrawn. I want to address another topic.

11 First of all, as of the beginning of 2011, what was
12 your company's financial position?

13 A. Not strong.

14 Q. And what was the reason for that?

15 A. Just we had lots of overhead. We were trying to get to
16 trade shows, trying to get marketing packages, everything. We
17 spent a lot of money building inventory, that kind of stuff.

18 Q. And how much revenue was coming in to compensate for costs?

19 A. Not enough.

20 Q. And what was your personal financial situation in 2011?

21 A. Very bad.

22 Q. What are the reasons why it was very bad?

23 A. I just spent everything I had either building the company
24 or doing what we could to sustain not getting paid.

25 Q. And what happened to the work you had been doing as a

D3DLLEV5

Lefrancois - direct

1 mortgage broker at that time?

2 A. That was a while back. It was all gone. I spent all of
3 it, you know, building this company and trying to survive.

4 Q. Did there come a time when you discussed with David Levy
5 the possibility -- well, actually, withdrawn.

6 As of the beginning of 2011, what was the status of
7 your 60 million shares, did they remain restricted or had you
8 been able to get the restrictive legend removed?

9 A. I could get the restrictive legend removed.

10 Q. Your understanding was you could get it removed?

11 A. Right.

12 Q. What was the reason you were allowed to get it removed?

13 A. Because I owned it over a year.

14 Q. And your -- you had been told that once restricted shares
15 had been held for a year you could remove the restricted
16 legend?

17 A. Correct.

18 Q. As a company insider, what if any restrictions remained on
19 your selling those shares or limitations remained on your
20 selling those shares even once they were unrestricted?

21 A. I could sell 1 percent every three months.

22 Q. And did there come a time when you discussed with David
23 Levy the possibility of selling your own stake in Greenway
24 Design Group in that manner, in 1 percent every three months,
25 to help address your personal financial situation?

D3DLLEV5

Lefrancois - direct

1 A. Yes.

2 Q. What did David Levy say in response to that proposal?

3 A. Not to do it because it could be looked at as damaging to
4 the company.

5 Q. And why did he say it would be damaging to the company for
6 you to sell shares, some of your 60 million shares?

7 A. We didn't really get into much more than that. He just
8 advised me not to do it and I didn't do it.

9 Q. And why didn't you do it?

10 A. Because he advised me not to do it.

11 Q. Did there come a time then when you asked David Levy, when
12 you informed David Levy that you continued to have personal
13 financial difficulties throughout 2011?

14 A. Yes.

15 Q. And what did David Levy offer to do for you instead of
16 selling the shares, your own shares in Greenway Design?

17 A. He offered me a personal note for a hundred thousand.

18 Q. I'm going to show you what's been marked for identification
19 as -- it's actually 3504-4, do you recognize those documents?

20 A. Yes.

21 Q. What are they?

22 A. It's a note to me for a hundred thousand dollars.

23 Q. And are there other documents behind it?

24 A. Yeah, there's another one for 5,000.

25 Q. And there's some handwritten notes in the back?

D3DLLEV5

Lefrancois - direct

1 A. Right.

2 Q. Do you recognize that handwriting?

3 A. It's mine.

4 Q. And what do you recognize that handwritten list to be?

5 A. Three other loans that were not exact -- weren't presented
6 as notes.

7 Q. From whom to who?

8 A. From David Levy to myself.

9 Q. And did you in fact --

10 MR. MASTER: Well, Government Exhibit offers
11 Government Exhibit --

12 THE COURT: 3504.

13 MR. MASTER: -- 3504-4 into evidence.

14 MR. SHARGEL: No objection.

15 THE COURT: It's received in evidence.

16 (Government's Exhibit 3504-4 received in evidence)

17 Q. Did you during any point in 2011 convert your stock from
18 restricted stock to unrestricted stock?

19 A. No.

20 Q. And, again, what's -- and at any point in 2011 did you sell
21 any of your shares in Greenway Design Group?

22 A. No.

23 Q. And what's the reason that you didn't sell any of your
24 shares in Greenway Design Group?

25 A. I was advised against it.

D3DLLEV5

Lefrancois - direct

1 Q. By whom?

2 A. David Levy.

3 Q. Now, what was the price of Greenway Design Group when it
4 began trading in January 2011?

5 A. I don't have that in front of me.

6 Q. Was it above a dollar?

7 A. Yes.

8 Q. What was your -- well, based on that valuation, how much
9 did you believe you might be worth?

10 A. Well, I had 60 million shares, so whatever it was above a
11 dollar would be that times 60 million.

12 Q. The price per share would be multiplied by the number of
13 shares you have to come up with the worth of your shares,
14 correct?

15 A. Correct.

16 Q. And so what was your reaction when you saw the stock right
17 at the beginning of 2011 start trading at above a dollar?

18 A. I was excited. It was unbelievable.

19 Q. And what if any understanding did you have as to why the
20 stock was trading at such a high price in early 2011?

21 A. I didn't.

22 Q. Now, did there come a time when you noticed that the stock
23 started to increase dramatically in price and increase
24 dramatically in trading volume?

25 A. Yes.

D3DLLEV5

Lefrancois - direct

1 Q. And when was the first time you noticed that?

2 A. Early, I believe it was March. We usually that's our
3 busiest season, we start going into the warmer months.

4 Q. Well, what if anything did David Levy say you needed to do
5 in order to help keep the stock price at a high valuation?

6 A. Get a lot of news out of our projects, things that were
7 positive.

8 Q. And what if anything did you do to keep David Levy informed
9 as to the issuance of press releases in the name of Greenway
10 Design Group?

11 A. Just kept him informed of what all of our projects were,
12 what was going on.

13 Q. And what if any knowledge -- withdrawn.

14 In March, I'd like to direct your attention to March
15 of 2011, did there come a time when you noticed the stock price
16 increase dramatically, even above a dollar?

17 A. Yes.

18 Q. How high did it get, as far as you can recall?

19 A. As far as I can recall, it got about \$1.60, in that range.

20 Q. And were there times when it traded even higher than that?

21 A. Yes, I believe.

22 Q. Now, based on the number of shares you had outstanding,
23 that would be a valuation of over \$150 million for Greenway
24 Design?

25 A. Correct.

D3DLLEV5

Lefrancois - direct

1 Q. What if anything was going on at Greenway Design Group that
2 to your knowledge would have justified such a high valuation?

3 A. The only thing I could think of is our -- the other
4 companies we were working with, the big companies that we had
5 possibilities of closing with.

6 Q. But had you closed any of those deals?

7 A. No.

8 Q. As of March 2010 or 2011?

9 A. No.

10 Q. And what involvement if any did you have in the promotion
11 of Greenway Design Group stock in March of 2011?

12 A. I had none.

13 Q. At the time, what if any knowledge did you have that anyone
14 was promoting Greenway Design Group stock in March of 2011?

15 A. I had none.

16 Q. What if anything did David Levy tell you about his plans to
17 promote Greenway Design Group stock in March of 2011?

18 A. None.

19 Q. And what happened after the price and trading volume of
20 Greenway Design Group increased so dramatically in March of
21 2011, what happened to the price and trading volume?

22 A. It decreased.

23 Q. And by a little bit or by a lot?

24 A. By a lot.

25 Q. And what if any knowledge did you have as to the reasons

D3DLLEV5

Lefrancois - direct

1 for this dramatic change in price and trading volume?

2 A. I didn't.

3 Q. Now, did there come a time later in 2011 when investors,
4 you began to hear from investors in Greenway Design Group
5 stock?

6 A. Yes.

7 Q. Without stating the content of what was told to you, what
8 was their reaction to what had happened with Greenway Design
9 Group stock?

10 A. It was negative.

11 Q. And what did they accuse Greenway Design Group stock of
12 being?

13 A. Pump and dump.

14 Q. And what familiarity did you have with that term?

15 A. At that time I had none.

16 Q. And did there come a time when you were forwarded emails
17 from an entity called bestdamnpennystocks.com about Greenway
18 Design Group?

19 A. Yes.

20 Q. And what -- did this occur after the dramatic change in
21 price and trading volume that you'd observed in March of 2011?

22 A. Yes.

23 MR. MASTER: One moment, your Honor.

24 Q. Did there come a time when you read closely a disclaimer
25 that was at the bottom of these bestdamnpennystocks promotions

D3DLLEV5

Lefrancois - direct

1 concerning Greenway Design Group?

2 A. Yes.

3 Q. And who did it say was paying for the bestdamnpennystocks
4 promotion concerning Greenway Design Group?

5 A. EZ English.

6 Q. And who did you know owned EZ English?

7 A. David Levy.

8 MR. MASTER: One moment, your Honor.

9 Q. How much money did it say that EZ English was paying for
10 these bestdamnpennystocks promotion?

11 A. 500,000.

12 Q. \$500,000?

13 A. Yes.

14 Q. And what was your reaction when you saw that EZ English was
15 paying \$500,000 to bestdamnpennystocks?

16 A. My reaction was I didn't really have one because I didn't
17 know if that was a normal process or how it worked. I wasn't
18 involved in any of that.

19 Q. Did there come a time when you discussed this
20 bestdamnpennystocks promotion with David Levy?

21 A. Yes.

22 Q. And describe what you said to him and what he said to you.

23 A. I basically said there was people blogging negative things
24 about us and what is this about, and I was told it was
25 basically normal promotional process.

D3DLLEV5

Lefrancois - direct

1 Q. To do what?

2 A. To promote stock.

3 Q. And did there come a time when the price of Greenway Design
4 Group began changing dramatically again in the fall of 2011?

5 A. Yes.

6 Q. And what was your reaction to this dramatic price change?

7 A. Baffled, really, just didn't really understand it.

8 Q. What if any notice did David Levy give you that there was
9 going to be another promotion concerning Greenway Design Group?

10 A. I didn't get any.

11 Q. And what if any reactions were you getting from
12 shareholders concerning -- withdrawn.

13 What about the trading volume of Greenway Design
14 Group, what happened to the trading volume of Greenway Design
15 Group in the fall of 2011?

16 A. It went back up.

17 (Continued on next page)

D3drlev6

Lefrancois - direct

1 Q. How dramatically was the change, or how dramatic was the
2 change?

3 A. It was significant.

4 Q. When, if ever, did you confirm with David Levy whether or
5 not he was in fact selling Greenway Design Group stock in
6 connection with this promotion?

7 A. I was not aware of it.

8 Q. After the price increased dramatically, the trading volume
9 increased dramatically in the fall of 2011, what happened to
10 the price and the trading volume?

11 A. It dropped.

12 Q. As it did before?

13 A. Yes.

14 Q. Again were you hearing complaints that Greenway Design
15 Group stock was a pump and dump?

16 A. Yes.

17 Q. What did you determine you had to do to address these
18 concerns?

19 A. We had to come out with a shareholder letter because on the
20 blogs we were being directly accused as officers --

21 MR. SHARGEL: Judge, I'm going to object to nameless
22 people on the blogs and what they were saying.

23 THE COURT: Overruled. Go ahead.

24 A. We were basically defending ourselves. They thought we
25 were actually selling stock and raising the price to sell stock

D3drlev6

Lefrancois - direct

1 to make money for the company, so we had to go out and issue a
2 letter that basically said not one officer has sold one share
3 of stock.

4 Q. I'm going to show you what's been marked as Government
5 Exhibit 400-20. There are a number of pages to that document.
6 What is in that packet?

7 A. These are press releases, stockholder letter.

8 Q. Those are the press releases and stockholder letter issued
9 in the name of Greenway Design Group during 2011?

10 A. Correct.

11 Q. Who actually wrote the press releases and the stockholder
12 letter?

13 A. Ray Wyman.

14 Q. Who is Ray Wyman?

15 A. Ray was one of our marketing directors in charge of our
16 website press releases, any editing we needed done.

17 MR. MASTER: The government offers Government Exhibit
18 400-20.

19 MR. SHARGEL: No objection.

20 THE COURT: 400-20 is received in evidence.

21 (Government's Exhibit 400-20 received in evidence)

22 MR. MASTER: Mr. Dinet, if you wouldn't mind
23 publishing the first page of that document.

24 Q. It's dated September 28, 2011. Again, what's the reason
25 that you issued this stockholder's letter?

D3drlev6

Lefrancois - direct

1 A. One, to get a little bit of information out about an award
2 we won.

3 Q. That's the first part.

4 A. Yes.

5 Q. Later in the letter --

6 A. Later in the letter it's regarding the fact that none of us
7 have sold any stock and any of the rumors that are going around
8 are not true.

9 MR. MASTER: Can you turn to page 2, Mr. Dinet.

10 Q. It states, "We are surprised by the extent of the unusual
11 recent daily trading volume recorded for our company's common
12 stock." Then it states, "We are certain that since January 1,
13 2011, to the present date the company's officers and directors
14 have not undertaken any public resale of their stockholdings."
15 Is that correct, to your knowledge?

16 A. Yes.

17 Q. It states, "We are not certain what may have caused these
18 increased trading levels." Who did you suspect was responsible
19 for the increased trading --

20 MR. SHARGEL: I object to the form of the question.

21 THE COURT: Sustained.

22 MR. MASTER: Withdrawn.

23 Q. What effect did it have on your company's stock to have the
24 stock jump up dramatically and jump down dramatically in price
25 and trading volume?

D3drlev6

Lefrancois - direct

1 A. It had a negative effect.

2 Q. How about to have your stock be called a pump and dump?

3 A. Very negative.

4 Q. After the blogs had circulated that the stock was a pump
5 and dump, how successful were you in being able to offer shares
6 of your stock to potential new investors in Greenway Design
7 Group?

8 A. It was very difficult.

9 Q. What was the reaction from people who you tried to offer
10 your shares as collateral for a loan or as equity for potential
11 investment?

12 MR. SHARGEL: I object to the form of the question.

13 THE COURT: Overruled.

14 A. We didn't have much success at all once it started
15 declining. We tried to do a PPM. We did a little bit of that,
16 but not very much.

17 Q. What is a PPM?

18 A. A private placement memorandum. It was basically going to
19 get smaller loans.

20 Q. In exchange for what?

21 A. For a discounted price.

22 Q. Of what?

23 A. Of stock.

24 Q. There was low interest in that?

25 A. Yes.

D3drlev6

Lefrancois - direct

1 Q. What is the stock trading at now?

2 A. Yesterday it closed at .007 of a penny.

3 Q. How much is your stock worth now, the 60 million shares
4 that at one point were worth over \$60 million?

5 A. I believe it's mid 350,000.

6 Q. Have you sold any shares yet in the company?

7 A. I sold 3 million shares a couple of months ago, like six
8 months ago, and that was at .002.

9 Q. What effect has this had on a your personal financial
10 picture?

11 A. It's huge. That's why I had to sell some in the first
12 place.

13 Q. How about on your company's financial picture?

14 A. Very difficult.

15 MR. MASTER: Nothing further, your Honor.

16 THE COURT: Ladies and gentlemen, do you need a short
17 recess? Take a short recess.

18 (Recess)

19 THE COURT: Mr. Shargel.

20 CROSS-EXAMINATION

21 BY MR. SHARGEL:

22 Q. Mr. Lefrancois, I don't believe that we have your entire CV
23 or background in business. Could you put that before the jury,
24 please.

25 A. Mostly grew up doing restaurant management, general

D3drlev6

Lefrancois - cross

1 manager. After being in the restaurant industry for quite a
2 while, I worked as a mortgage broker in finance, doing loans
3 for the purchase of business, real estate, refinancing, second
4 mortgages. Then I got with a partner and we built some homes
5 in Dallas, Texas. That brought me on to Greenway Design Group.

6 Q. Your entire background -- I'm sorry. What is your
7 educational background?

8 A. Three years of college.

9 Q. So, your entire background, your entire work experience,
10 has been in the business world, fair statement?

11 A. Yes.

12 Q. You understand the nature of contracts and purchases and
13 sales, right?

14 A. Correct.

15 Q. You know what is necessary to start up a business and keep
16 a business going, fair statement?

17 A. Yes.

18 Q. Going back to the beginning of your testimony, when you
19 were asked questions by Mr. Master about money that was going
20 to be furnished by David Levy after you met Mr. Levy -- do you
21 recall that testimony?

22 A. Yes.

23 Q. And Mr. Master put up on the board that the money was
24 coming from a company called EZ English?

25 A. Yes.

D3drlev6

Lefrancois - cross

1 Q. Were you concerned about which company at that first
2 meeting where it was followed by a hundred thousand dollar
3 check and the check was from EZ English with a signature that
4 you didn't recognize? Right?

5 A. I wasn't concerned.

6 Q. You weren't concerned at all. You were familiar with using
7 different corporate structures to lend money, borrow money,
8 engage in business. That's perfectly proper, as you understand
9 it in the business world, right?

10 A. Yes.

11 Q. The idea that you didn't recognize the name Yael Tal or
12 know the corporate structure of EZ English meant nothing to you
13 at the time, correct?

14 A. Correct.

15 Q. Whether it was Fitzwilliams or Date Palm Capital, that was
16 money being received in the ordinary course of business, right?

17 A. Yes.

18 Q. There was no suspicion to be raised, fair statement?

19 A. Yes.

20 Q. You started off with a cordial relationship with Mr. Levy,
21 right?

22 A. Yes.

23 Q. You got to know him over time, right?

24 A. Yes.

25 Q. And he was the largest investor in the company, correct?

D3drlev6

Lefrancois - cross

1 A. Yes.

2 Q. He also was in a certain sense hands-off on management. He
3 didn't micromanage or call you every day or anything like that,
4 did he?

5 A. Correct.

6 Q. He wanted you to grow the company?

7 A. Yes.

8 Q. He believed in the product?

9 A. Yes.

10 MR. MASTER: Objection.

11 THE COURT: Overruled.

12 Q. I think you said on direct examination he, and Donna
13 perhaps, were excited about the project?

14 A. Yes.

15 Q. The unit that was passed around among the jurors was, just
16 to make clear, the residential unit, correct?

17 A. Correct, yes.

18 Q. It was for homes, individual homes or small buildings,
19 where it would be used simply to save money, correct?

20 A. Correct, yes.

21 Q. You demonstrated again and again that it can provide
22 substantial savings, correct?

23 A. Yes.

24 Q. But that was only one part of your business, fair?

25 A. Yes.

D3drlev6

Lefrancois - cross

1 Q. The more significant part of the business that you were
2 trying to develop when you were growing the business was larger
3 buildings?

4 A. Correct.

5 Q. Commercial ventures, right?

6 A. Yes.

7 Q. Large companies?

8 A. Yes.

9 Q. You even were negotiating down in Mexico to supply these
10 devices, right?

11 A. Yes.

12 Q. You were hoping to build an international business,
13 correct?

14 A. Correct, yes.

15 Q. It is common, based on your business experience, to not be
16 limited by the borders of the United States; there are markets
17 outside the United States, right?

18 A. Absolutely.

19 Q. No question about it, right? There was a promotional video
20 that showed how the product worked, right?

21 A. Yes.

22 MR. SHARGEL: With the Court's permission, and we have
23 a stipulation on this, your Honor, as to the admissibility of
24 the very short video, I would like, as Mr. Master did, to start
25 with the product and show the video to the jury.

D3drlev6

Lefrancois - cross

1 THE COURT: Go ahead. Are you going to read from a
2 stipulation or are you just telling us?

3 MR. SHARGEL: I'll read from it. It is stipulated,
4 once again among the lawyers and the parties, Defense Exhibit
5 A232 is a true and accurate copy of a video downloaded on March
6 11, 2013, from Greenway Design Group, Inc.'s website located
7 at, and then there is the web address.

8 Q. The company is still in business, correct?

9 A. Yes.

10 Q. And you hope to grow it again, right?

11 A. Yes.

12 Q. It's not like the end of the road, right?

13 A. No, I hope not.

14 Q. You do maintain this website and video on the website,
15 right?

16 A. Yes.

17 MR. SHARGEL: Are we ready, Jennifer?

18 (Video shown)

19 Q. As a businessman, you know that advertising is a key and
20 crucial element, correct?

21 A. Yes.

22 Q. No matter how good your product is, if no one knows about
23 it, the business isn't going anywhere, right?

24 A. Correct.

25 Q. We heard that the gentleman who was describing the product

D3drlev6

Lefrancois - cross

1 and describing the technicalities of the project, if you will,
2 said that the savings was 30 percent. Do you recall that?

3 A. Yes. We claim up to 30 percent only because we have ranged
4 24 percent, we have gone as high as 36 percent. So we have a
5 range of up to 30 percent.

6 Q. You have that range depending on the presentation, right?

7 A. Yes.

8 Q. You certainly don't mean to be misleading with that, you
9 mean to be accurate, correct?

10 A. Yes.

11 Q. Accuracy brings with it a range, fair statement?

12 A. Correct.

13 Q. In terms of news and publicity, that serves two purposes.
14 First, the consumer, whether it's a commercial consumer or a
15 residential consumer, fair?

16 A. Yes.

17 Q. In addition to advertising for that market, and your
18 website is used for this purpose, it also has the potential of
19 attracting investors, correct?

20 A. Correct.

21 Q. You're not going to find investors, once again, until you
22 grow the company and it becomes known, fair statement?

23 A. Yes.

24 Q. You were asked questions by Mr. Master about press
25 releases. Do you recall those questions?

D3drlev6

Lefrancois - cross

1 A. Yes.

2 Q. Those press releases were written, I believe you said on
3 direct examination, by a man named Ray Wyman, right?

4 A. Yes.

5 Q. Ray Wyman, what is his official position in the company?

6 A. Marketing director. He doesn't really have an exact one.
7 He is our marketing --

8 Q. By whatever title, he is the individual, he is the man who
9 actually draws the press releases, right?

10 A. Yes.

11 Q. During the period of time that we have been talking about
12 all afternoon, during that period of time he would draft the
13 press releases, right?

14 A. Yes.

15 Q. He would show them to you before they were issued, fair
16 statement?

17 A. Correct.

18 Q. Because you were the CEO of the company, right?

19 A. Correct.

20 Q. He would show them to Bill Aul, the attorney for the
21 company, correct?

22 A. Correct.

23 Q. The reason that he showed them to Bill Aul and to you was
24 that everyone could put their collective heads together to make
25 sure that what was being said was accurate, right?

D3drlev6

Lefrancois - cross

1 A. Correct.

2 Q. You certainly didn't want to mislead anyone, right?

3 A. Correct.

4 Q. You weren't looking to artificially pump the value of the
5 stock, right?

6 A. No.

7 Q. The work that you were doing along with Mr. Aul -- who is
8 an attorney, as you told us, in San Diego, right?

9 A. Yes.

10 Q. An attorney who specializes in or whose area of competence
11 is business, right?

12 A. Yes.

13 Q. Mr. Aul Or attorney Aul would approve those press releases,
14 right?

15 A. Yes.

16 Q. You were well-intentioned at the time that the press
17 releases were issued, right?

18 A. Yes.

19 Q. After review by you and Mr. Aul and Ray Wyman, the content
20 of the press releases were, to the best of your ability and
21 knowledge, true and accurate, right?

22 A. Yes.

23 Q. There was no question about that, right?

24 A. Correct.

25 Q. The first time that this stock rose and you had

D3drlev6

Lefrancois - cross

1 conversations with Mr. Levy, right?

2 A. Yes.

3 Q. You discussed with him the very fact that volume and price
4 was increasing in the stock, right?

5 A. Yes.

6 Q. You told us that on direct examination, right?

7 A. Yes.

8 Q. Mr. Levy told you he was promoting the stock, right?

9 A. Yes.

10 Q. He didn't say, I'm promoting the stock but don't tell
11 anyone whatever you do? It was nothing like that, was it?

12 A. No.

13 Q. He flat-out said that this was the reason that it was
14 working, he told you that he needed to have advertising,
15 correct?

16 A. Yes.

17 Q. Press releases?

18 A. Yes.

19 Q. I'm sorry if I'm going to too fast. I'll slow down. You
20 needed to get the product out there, right?

21 A. Yes.

22 Q. You needed to get the company out there, yes?

23 A. Yes.

24 Q. The efficaciousness of the product had to get out and be
25 known in order to sell this product, correct?

D3drlev6

Lefrancois - cross

1 A. Correct.

2 Q. Just like going to the residential model for a moment for
3 home consumers, just like any other product, here you had a
4 device that was selling for I think you said \$99.99, right?

5 A. Yes.

6 Q. Consumers buy on the basis of advertising, right?

7 A. Yes.

8 Q. Whether the advertising is on television, on the Internet,
9 as we just saw this promotion, by whatever means, that's how
10 you would get the company out there, right?

11 A. Yes.

12 Q. When there is no news and there was a question as to why
13 the stock went down and why it wasn't selling, the volume went
14 down and, as Mr. Master pointed out, your millions of shares
15 dropped in value, as every stockholder's shares dropped in
16 value, right?

17 A. Yes.

18 Q. That was a period of time when there wasn't a whole lot of
19 news, right?

20 A. Correct.

21 Q. That was at a time when there was a very low volume of
22 business, right?

23 A. Yes.

24 Q. When you had news to report, you reported the news, right?

25 A. Yes.

D3drlev6

Lefrancois - cross

1 Q. In the press release?

2 A. Yes.

3 Q. For example, if you recall, there was an announcement in
4 March. I think you have the government exhibits in front of
5 you, a batch of press releases, right?

6 A. Yes.

7 Q. In preparation for your testimony, you went over the press
8 releases with Mr. Master?

9 A. Yes.

10 Q. You went over those press releases one by one, right?

11 A. Yes.

12 Q. During your preparation for your testimony here as a
13 witness, you told Mr. Master that the information that's in
14 those press releases was true, right?

15 A. Correct.

16 Q. Could you give the jury a sense of what those press
17 releases were about. We are not going to take all the time to
18 put them on the screen. Just go through them, if you will, and
19 tell me what they generally were about.

20 A. Generally, they are about new jobs that we were going to
21 get, companies that we had convertible agreements with or we
22 were further down the road on, or some that we have actually
23 installed on: Denny's for example, Hughes Network Systems,
24 some banks down in Costa Rica, that kind of stuff.

25 Q. Those press releases were going out and being disseminated

D3drlev6

Lefrancois - cross

1 for further reporting because you knew full well that the whole
2 idea of a press release means that it would be published
3 somewhere, right?

4 A. Correct.

5 Q. Other people who collect information relative to stocks
6 would pick up the news that was being released, right?

7 A. Yes.

8 Q. Essentially, excitement would be generated, right?

9 A. Yes.

10 Q. That would increase or promote the idea not only of sales
11 but of interest in the stock, right?

12 A. Yes.

13 Q. Because you knew that there were companies who specialize
14 in putting the news out there, the news that is contained in
15 the press releases, right?

16 A. Yes.

17 Q. During the time that this promotional campaign was going
18 on, the stock was rising, right?

19 MR. MASTER: Objection.

20 THE COURT: Overruled.

21 Q. The stock was rising. Then there came a time when stock
22 started to decline, as we had it. But, as you said, I think
23 you said both on direct and cross, there was really no activity
24 to report, right?

25 A. Correct.

D3drlev6

Lefrancois - cross

1 Q. You certainly weren't going to make something up, right?

2 A. Right.

3 Q. You certainty weren't going to create a press release that
4 was either false or misleading, right?

5 A. Correct.

6 Q. This was an honest company that wanted to do honest
7 business, correct?

8 A. Yes.

9 Q. A company above reproach, right?

10 A. Yes.

11 Q. That's why you wrote that letter to shareholders when the
12 people on blogs -- you're familiar with blogs, right?

13 A. Yes.

14 Q. You know that anyone, anyone, it could be a 10-year-old,
15 could go on a blog and say anything he or she wants to say,
16 right?

17 A. Correct.

18 Q. There is no filter on a blog, is there?

19 A. Correct.

20 Q. Within reason there is no filter. There is no one who has
21 to have a certain level of education or interest or experience
22 to write something on a blog, right?

23 A. Correct.

24 Q. If someone, a faceless person with the anonymity of the
25 Internet, writes that this is a pump and dump, it doesn't mean

D3drlev6

Lefrancois - cross

1 that it's a pump and dump, right?

2 A. Correct.

3 Q. It just means that there is that nameless, faceless person
4 who chose to write that on a blog, right?

5 A. Right.

6 Q. You know from reading blogs, whether it is in the housing
7 business or the restaurant business or any business that you
8 have ever been in, that there are people who are mean-spirited,
9 who would say anything on a blog, right?

10 A. Yes.

11 Q. Restaurant reviewers who would review a restaurant and say
12 nasty things about the restaurant even though you knew full
13 well that those things weren't true, right?

14 A. Yes.

15 Q. It is true that at the time, I think it was 2008, when the
16 price of the stock started declining -- or 2009. Do you
17 recall? Do you remember it went up?

18 A. It would be higher in '11.

19 Q. Went higher in '11. Again -- we had this before, I don't
20 mean to repeat -- but there wasn't a whole lot of press
21 releases going on at those times, right, in '11?

22 A. Correct.

23 Q. Some of the projects that you were thinking you would have
24 in Mexico were kind of falling off, right?

25 A. Taking longer than we thought.

D3drlev6

Lefrancois - cross

1 Q. Taking longer than you thought. You thought you would have
2 contracts. There were some major companies that you were
3 talking to?

4 A. Correct, yes.

5 Q. Tell the jury, what were the major companies?

6 A. I don't know how to pronounce it. It's 50 grocery store
7 chains in Mexico, and we are still working with them now. We
8 have been working with them for six months trying to get this
9 deal done. Then we have over 600 banks in Costa Rica that we
10 have been working with that we are trying to get finished and
11 still it hasn't gotten done yet, but it's in the pipeline. A
12 few examples.

13 Q. I didn't mean to cut you off.

14 A. That's OK.

15 Q. You're still working with those companies. But 2011 was a
16 very difficult year, right?

17 A. Yes.

18 Q. As the price went down, the value of your stock went down,
19 right?

20 A. Correct.

21 Q. Mr. Levy was still providing funds in 2011, wasn't he?

22 A. Yes.

23 Q. Let's talk about the funds that Mr. Levy gave you. You
24 were looking, I think you said, for an investor that was
25 willing to come forward and lend the company or invest in the

D3drlev6

Lefrancois - cross

1 company \$300,000, correct?

2 A. Correct.

3 Q. What options did you have at the time that you were looking
4 for that initial investment? Did you have any stock to give at
5 that point?

6 A. No.

7 Q. Because it was a privately held company at that point,
8 right?

9 A. Correct.

10 Q. The only option was to essentially take a loan or borrow
11 from the investor, right?

12 A. Correct.

13 Q. Or the investor could take an equity piece in the company,
14 right?

15 A. Yes.

16 Q. But the format that you agreed to with Mr. Levy was to take
17 the loan, right?

18 A. Correct.

19 Q. That he was going to lend you money?

20 A. Right.

21 Q. You said on that first day that you met him, he agreed that
22 he would give you a hundred thousand dollars and then another
23 \$200,000 in a short period of time, right?

24 A. Correct.

25 Q. In other words, he, Mr. Levy, agreed at one meeting with

D3drlev6

Lefrancois - cross

1 you, based on your enthusiasm, your presentation, your
2 projections of what the future might bring, he was willing to
3 lend you the money, right?

4 A. Yes.

5 Q. You entered into these promissory notes, right?

6 A. Correct.

7 Q. The terms of the promissory notes were known to you, right?

8 A. Yes.

9 Q. Everything that had been agreed upon was reduced to
10 writing, correct?

11 A. Yes.

12 Q. There were no side deals or anything like that, right?

13 A. No.

14 Q. You knew as a businessman that when you enter into a
15 contract, whether it be a promissory note or anything else,
16 that the contract spoke for itself, right?

17 A. Yes.

18 Q. The government, Mr. --

19 THE COURT: Master.

20 Q. -- Master.

21 MR. SHARGEL: It's late in the day. Sorry. He
22 forgets mine, too.

23 MR. MASTER: Never.

24 Q. Mr. Master was asking you about the terms of the agreement
25 that you entered into, right?

D3drlev6

Lefrancois - cross

1 A. Yes.

2 Q. Starting at the beginning and then going straight forward
3 in the time it was a public company and the notes became
4 convertible notes, right?

5 A. Right.

6 Q. He was questioning some terms and putting questions to you
7 about some of the terms, right?

8 A. Yes.

9 Q. Going back to the initial payment of money or the initial
10 loan, going back to that point, and we were talking about June
11 of 2009, you read and understood the contract, meaning the
12 promissory note, right?

13 A. Yes.

14 Q. You had other people with whom you worked who you discussed
15 this with, right?

16 A. Yes.

17 Q. You were an adult and an experienced businessman, right?

18 A. Yes.

19 Q. You found the terms satisfactory, right?

20 A. Correct.

21 Q. You believed that you could live with those terms and that
22 they were fair to you and fair to Mr. Levy, right?

23 A. Yes.

24 Q. No one was taking advantage of the other, right?

25 A. No.

D3drlev6

Lefrancois - cross

1 Q. Mr. Levy, based on what you told him, what he saw in the
2 film -- did he ever see the device live or working?

3 A. I'm not sure at that particular day, but he has.

4 Q. I wasn't talking about that particular day. I was really
5 talking about just over time.

6 A. Yes.

7 Q. He got to see the device, right?

8 A. Yes.

9 Q. He was impressed with what he saw?

10 A. Yes.

11 Q. Everyone in this deal -- when I say "in this deal," now Mr.
12 Levy was in the deal, you were in the deal, your colleagues
13 were in the deal, your company was in the deal -- everyone was
14 happy and satisfied, is that a fair statement?

15 A. Yes.

16 Q. The work by you was to grow the company, right?

17 A. Yes.

18 Q. The work by Mr. Levy, I won't call it the work, but his
19 role was that he was the investor, right?

20 A. Correct.

21 Q. You're talking about venture capitalists, companies out in
22 California that would lend money to a promising business,
23 right?

24 A. Yes.

25 Q. Lend money to a startup company with a good idea?

D3drlev6

Lefrancois - cross

1 A. Correct.

2 Q. You were a startup company with a darned good idea, right?

3 A. Yes.

4 Q. You believed in it, so now everyone's working together, Mr.
5 Levy, whether you call him an investor or venture capitalist,
6 he was going to be the money guy and everything was going to go
7 forward, right?

8 A. Yes.

9 Q. He did supply, as you said, over \$2 million, right?

10 A. Yes.

11 Q. There came a time, as you told us this afternoon, that Mr.
12 Levy decided, when you were in that area of convertible notes,
13 now a public company -- by the way, with a public company and
14 what you were doing, Mr. Levy explained to you that that's a
15 good method of a startup to raise cash and have continued
16 influx of cash, right?

17 A. Yes.

18 Q. A continued influx of investors, that that would provide
19 the best opportunity, right?

20 A. Correct.

21 Q. And that it was better than staying private, right?

22 A. Yes.

23 Q. He told you about this reverse merger and how a shell would
24 be taken and you would merge into the shell, right?

25 A. Yes.

D3drlev6

Lefrancois - cross

1 Q. And how that would be the most cost-effective and
2 expeditious way of going public, right?

3 A. Yes.

4 Q. He said it was a time-worn model that companies, starting
5 with companies that are now major companies, I'm not going to
6 name any companies, but major corporations trading on the New
7 York Stock Exchange started in that way, with reverse mergers
8 and exchange of stock, right?

9 A. I don't remember that conversation, but the rest of it,
10 yes.

11 Q. Did Mr. Levy suggest that in going public, he was doing
12 anything wrong?

13 A. No.

14 Q. Did he ever suggest that to you?

15 A. No.

16 Q. Did he ever suggest that he didn't want his name to be
17 mentioned anywhere or his companies to be mentioned anywhere,
18 keep it off the books, or anything like that?

19 A. No.

20 Q. Never, right?

21 A. Never.

22 Q. He started supplying the money to you, and there came a
23 time, this is where I want to get back to, there came a time
24 when he was going to convert one of the notes, right?

25 A. Yes.

D3drlev6

Lefrancois - cross

1 Q. You had the option -- when I say "you," I'm not singling
2 you out. You're the CEO. But the company, the company, had
3 the option of not permitting the conversion, but rather you
4 could have paid the cash back, right?

5 A. Correct.

6 Q. That didn't really make any sense, correct?

7 A. No.

8 Q. Because all during the period of time we have been talking
9 about, you were cash-starved?

10 A. Yes.

11 Q. Or at least cash-hungry, right?

12 A. Yes.

13 Q. So it didn't make any business sense to say, for example,
14 with respect to the hundred thousand, the 300,000, we have seen
15 notes in all denominations, it didn't make any business sense
16 for you to go to the cash register of the business, because you
17 didn't have that kind of money on hand, to say I'm going to
18 give you back the cash and we'll rip up the note and that note
19 is satisfied; you couldn't do that, right?

20 A. No.

21 Q. The best way for you to do it, think back to that time, was
22 to simply let the note be converted and giving him stock rather
23 than cash makes a whole lot of sense because it will allow us,
24 whether it was with Mr. Levy or other investors, to get money
25 in return for paper as opposed to get money in return, for you

D3drlev6

Lefrancois - cross

1 have to pay it back in three months or six months, is that fair
2 to say?

3 A. Yes.

4 Q. The fact that he converted that note pursuant to contract
5 pursuant to what the price was and the terms of the note, that
6 was actually easier for you and the company rather than paying
7 back cash.

8 A. Correct.

9 Q. Fair statement also?

10 A. Yes.

11 Q. Over time, when things were being delayed and the business
12 prospects in Mexico, not that it was over but it was going a
13 whole lot slower than you wanted to go, right?

14 A. Yes.

15 Q. The business, is it fair to say, wasn't performing? You
16 didn't lose hope, you stayed with it, but the business wasn't
17 performing as quickly and as expeditiously as you would have
18 liked, right?

19 A. Yes.

20 Q. Lack of performance, lack of performance, was a very
21 difficult situation, a very difficult phenomenon when the
22 shares started to drop in 2011, correct?

23 A. Correct.

24 Q. Nevertheless, even though you had performance problems,
25 even though you were like crunched and felt like almost

D3drlev6

Lefrancois - cross

1 claustrophobic about what was happening in the business, Mr.
2 Levy, David Levy, continued to supply money, right?

3 A. Yes.

4 Q. You would call him on the telephone and say, David, we need
5 more money, right?

6 A. Yes.

7 Q. There was no contract that said that David Levy had to
8 supply more money, right?

9 A. Correct.

10 Q. There was an oral understanding you had that he was going
11 to supply up to \$300,000, but now it's no longer '08, it's '09,
12 it's '10, it's '11. He had no obligation. He could have said
13 to you, Ben, it's not performing and don't come by here
14 anymore, I'm not going to give you any more money. He could
15 have said that, right?

16 A. Yes.

17 Q. But he believed in the company and he stayed with it,
18 right?

19 A. Yes.

20 Q. You were the guy who looked to David Levy each and every
21 time and said, David, can we borrow some more money, can we
22 sign some more convertible notes, do you remember that?

23 A. Yes.

24 Q. Again and again I think that you saw some of the promissory
25 notes. You had promissory notes dated March 24, 2011,

D3drlev6

Lefrancois - cross

1 \$100,000; August 16, 2011, \$25,000; September 1, 2011, \$25,000;
2 April 27, 2011, \$100,000. This was almost like, and I don't
3 mean to belittle either my client or you, but this was almost
4 like when you needed to turn on the faucet, there is the
5 faucet, right?

6 A. Right.

7 MR. SHARGEL: Mr. Master just jumped.

8 Q. By the way, with regard to the press releases, and we had
9 the subject matter of the press releases, did Mr. Levy control
10 either the timing or the content of the press releases?

11 A. No.

12 Q. Then there came a time when you had personal financial
13 difficulties, as you told us, correct?

14 A. Yes.

15 Q. You were having difficulties paying the mortgage on your
16 house, right?

17 A. Yes.

18 Q. How many children do you have?

19 A. Two.

20 Q. So you have a family of four and you had enormous
21 obligations that were difficult to meet, right?

22 A. Correct.

23 Q. You went to David Levy and there was a question about
24 whether you should sell some shares because your shares were
25 unrestricted, right?

D3drlev6

Lefrancois - cross

1 A. Yes.

2 Q. You knew at that time that a person that held unrestricted
3 shares had the ability to sell, right?

4 A. Yes.

5 Q. Mr. Levy said to you, and I think you were asked this
6 question several times, Mr. Levy said to you, Ben -- it was Ben
7 and David, right?

8 A. Yes.

9 Q. Ben, don't sell your shares, it's not a good idea. He
10 understood the stock market better than you, right?

11 A. Yes.

12 MR. MASTER: Objection.

13 THE COURT: Overruled.

14 Q. He was giving you advice, right?

15 A. Yes.

16 Q. You testified to that advice that he gave you on direct
17 examination, you remember that?

18 A. Yes.

19 Q. He said don't sell your stock. You wanted to sell your
20 stock, but he said don't sell your stock, it won't look good,
21 in words or substance, right?

22 A. Yes.

23 Q. He made clear to you that you were still, as you are now,
24 the chief executive officer of the company and anyone could
25 understand that if the CEO is selling his stock, that suggests

D3drlev6

Lefrancois - cross

1 maybe to the market a lack of confidence in the stock, right?

2 A. Yes.

3 Q. A lack of confidence in the company, right?

4 A. Yes.

5 Q. It made sense to you what he said, didn't it?

6 A. Yes.

7 Q. It was he who came up with the solution, and the solution
8 was, because of your financial difficulties, your personal
9 financial difficulties, he made a check out on whichever one of
10 these corporations, his corporate vehicles, he made a check out
11 to you and your wife for \$100,000, right?

12 A. Yes.

13 Q. That was kind of like a lifeboat in a very difficult storm,
14 right?

15 A. Yes.

16 Q. With that hundred thousand dollars you were able to, at
17 least for a while, mend your financial fences, right?

18 A. Yes.

19 THE COURT: Mr. Shargel, you will have to excuse me
20 now. We are going to have to break. It's 5 o'clock.

21 MR. SHARGEL: Fine.

22 THE COURT: A little bit before 5 o'clock. We will
23 resume tomorrow morning at 10 o'clock. Remember the
24 instructions. Keep open minds, don't discuss the case, don't
25 do any research. See you tomorrow at 10:00.

D3drlev6

Lefrancois - cross

1 (Jury not present)

2 THE COURT: You're on cross-examination. Don't talk
3 to the government about your testimony. OK?

4 THE WITNESS: Yes.

5 (Witness not present)

6 THE COURT: I'm the host for the Federal Bar
7 Association meeting at 5 o'clock. General Suter, the chief
8 clerk of the Supreme Court is our guest. I have to go
9 downstairs. Do you want to talk a scheduling matter?

10 MR. SREBNICK: I want to find out when the defense
11 witnesses will need to be here. They are out of town. Does
12 your Honor intend to proceed at a particular time?

13 THE COURT: I intend to proceed at 10 o'clock.

14 MR. SREBNICK: Tomorrow the government still has its
15 witnesses. But when they are going to conclude their
16 presentation, because it is a weekend on Friday.

17 MS. COHEN: Your Honor, as I said, I think we will
18 either conclude tomorrow or on Friday. So I would have defense
19 witnesses for Friday.

20 THE COURT: Have your witnesses available for Friday.

21 MR. SREBNICK: Will do.

22 MR. SHARGEL: Are we doing the charge conference on
23 Friday?

24 THE COURT: Yes. Maybe we'll break a little bit
25 early. I haven't seen any of the charges.

D3drlev6

Lefrancois - cross

1 MR. SHARGEL: Remember yesterday?

2 THE COURT: I know. You're going to submit them on
3 Thursday. So I can expect them on Thursday.

4 MR. SHARGEL: Yes, sir.

5 THE COURT: Do you think we will be charging the jury
6 on Monday or Tuesday?

7 MR. SHARGEL: Not Monday. I hope we sum up on Monday.
8 Or Tuesday.

9 MR. SREBNICK: Thank you, Judge.

10 THE COURT: But it will be early next week?

11 MR. SHARGEL: Yes, for sure.

12 (Adjourned to 10:00 a.m., March 14, 2013)

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21

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23

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25

INDEX OF EXAMINATION

Examination of: Page

DERRICK M. HOLMES

Cross By Mr. Shargel 966

Cross By Mr. Srebnick 1002

Redirect By Mr. Master 1033

Recross By Mr. Shargel 1038

BENJAMIN LEFRANCOIS

Direct By Mr. Master 1042

Cross By Mr. Shargel 1098

GOVERNMENT EXHIBITS

Exhibit No. Received

400-5, 400-6, 400-7, 400-14, 400-11, . . . 1070

400-12, 400-13, 400-18,

400-15, 400-16, and 400-17

400 1043

400-8 1052

400-23 1083

400-20 1095

3504-4 1087

DEFENDANT EXHIBITS

Exhibit No. Received

A175 985

A188 1032

A190 1006

1	A192	1026
2	A193	1020
3	A195	1024
4	A196	1008
5	A200A	1035
6	B101	1029
7	B96	1027
8	B98	1025
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
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24			
25			